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Hon Warren Entsch MP
Chair
The Joint Standing Committee on Northern Australia
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Chair

Inquiry into the destruction of 46,000 year-old shelters at the Juukan Gorge in the Pilbara region of Western Australia

Rio Tinto welcomes the opportunity to participate in the Joint Standing Committee's Inquiry into the destruction of the rockshelters at the Juukan Gorge in the Pilbara region of Western Australia.

The Inquiry presents an opportunity to examine in detail the events leading up to the destruction of the rockshelters and to identify areas where Rio Tinto believes changes in the way we operate will be required. We will also provide our views on potential changes to legislative frameworks, as requested by the Committee.

Our detailed submission is set out in the Introduction and Sections that follow.

We are determined to learn the lessons from what happened at Juukan Gorge, to restore a relationship of trust with the PKKP people and to re-build Rio Tinto's reputation for cultural heritage management.

Yours sincerely

J-S Jacques
Chief executive

INTRODUCTION

- 1 The destruction of the Juukan rockshelters should not have occurred.
- 2 Rio Tinto has unreservedly apologised to the Puutu Kunti Kurrama and Pinikura people (**PKKP**), and we reaffirm that apology now. For the benefit of current and future generations of Australians, we are determined to learn the lessons to ensure that the destruction of heritage sites of exceptional archaeological and cultural significance, such as the Juukan rockshelters, never occurs again.
- 3 Rio Tinto has a long-standing commitment to protecting cultural heritage and has worked with Traditional Owners over many years to preserve and manage that heritage. We have long accepted the need to operate over and above strict compliance with the law and the formal agreements to which we are a party. For that reason, in addition to our legal responsibilities and obligations, we have also set our own internal standards and procedures to govern how we should responsibly manage and preserve cultural heritage.
- 4 While we had obtained legal approval under section 18 of the *Aboriginal Heritage Act 1972* (WA) (**AH Act**) to disturb the Juukan rockshelters, we deeply regret that we failed to meet our own internal standards in relation to the destruction of the Juukan rockshelters in May 2020.
- 5 It is the case that the mining industry brings important benefits to Australia. However, there are inevitable trade-offs that need to be made between the benefits that mining brings to Traditional Owners and to the country as a whole, and the impacts that mining activity can have on both natural and cultural heritage. Managing such trade-offs is particularly important in a remote and relatively undisturbed region like the Pilbara, which has an exceptionally rich cultural heritage as a result of continuous human habitation extending over millennia.
- 6 Traditional Owners, archaeologists and anthropologists have identified and recorded over 13,300 ethnographic and archaeological sites within Rio Tinto's land position in the Pilbara. In the majority of cases, it is possible to preserve these sites *in situ*, by designing mine facilities and surface infrastructure to avoid them or by mining around them. However, given the land area impacted by bulk mining activities, like iron ore, and the high density of heritage sites, some impacts are unavoidable. Where this is the case, ministerial consent must be obtained.
- 7 Before applying for consent, Rio Tinto engages with Traditional Owners and communities to identify areas or individual sites of high ethnographic, archaeological or cultural significance that should be avoided, if at all practicable.
- 8 We deeply regret that the processes to facilitate the preservation of such significant sites failed to prevent the destruction of the Juukan rockshelters.
- 9 We have conducted a thorough review of the circumstances surrounding the destruction of the Juukan rockshelters and our relationship with the PKKP from 2003 until now.
- 10 Negotiations with the PKKP commenced in 2003 and resulted in the Binding Initial Agreement (**BIA**) reached in 2006, and the Regional Framework Deed (**RFD**) and the Participation Agreement signed in 2011 (**Participation Agreement**). In these negotiations, the PKKP were represented by lawyers and advised by relevant experts. Through those negotiations and under the terms of these agreements, Rio Tinto believes that, in exchange for financial and non-financial benefits, it obtained the "Free Prior and Informed Consent" of the PKKP to conduct mining

- operations on PKKP land at Brockman 4, which included the land on which the Juukan rockshelters were located.
- 11 The 2011 agreements were concluded after conducting a number of ethnographic and archaeological surveys of the area containing the Juukan shelters in collaboration with the PKKP, including archaeological excavations of the Juukan rockshelters in 2008, the results of which were shared with the PKKP.
- 12 The 2011 Participation Agreement included a list of sixteen (16) areas of high cultural heritage significance identified by the PKKP, and referred to as "Rights Reserved Areas", which it was agreed would have additional protections. The Juukan sites were not included on that list.
- 13 During 2012 and 2013, Rio Tinto progressed its plans for Brockman 4, Pit 1 in the Juukan Gorge area and four pit options were considered. Three avoided the shelters to varying distances. The fourth option impacted the rockshelters in order to access higher volumes of high-grade ore, and was the option that was chosen by Rio Tinto.
- 14 In order to implement the selected mine design option, Rio Tinto in 2013 applied for and obtained a section 18 consent under the AH Act to impact the Juukan rockshelters for the purpose of planned mining activity. The PKKP were informed of the application and of the granting of the section 18 consent.
- 15 In preparation for the section 18 consent, a further ethnographic survey was conducted in 2013 and three excavations of the Juukan rockshelters were subsequently conducted in 2014 to ensure the salvage, analysis and *ex situ* preservation of the cultural heritage material contained within the rockshelters.
- 16 As a result of these surveys, material new information on the significance of the Juukan rockshelters became available to the PKKP and Rio Tinto. It is clear that various opportunities were missed to re-evaluate the mine plan in light of this material new information. A further opportunity was missed in 2018, with the publication of the final report on the archaeological excavations at Juukan 2 conducted during 2014.
- 17 From early 2020, there also appears to have been growing awareness within the PKKP, and within Rio Tinto, of the greater cultural heritage significance of the wider Juukan Gorge area. Several further opportunities were missed at this stage to pause and reflect on whether the agreed plan of *ex situ* preservation of the heritage material discovered within the rockshelters was sufficient or whether the rockshelters themselves should be also preserved.
- 18 A formal request to cease mining activities at the Juukan rockshelters was received by Rio Tinto from the PKKP in May 2020, by which time the blasting sequence had already commenced, as described in sections 3.14 - 3.23 below.
- 19 Rio Tinto welcomes the Joint Standing Committee's Inquiry as it presents an opportunity to examine in detail the events leading up to the destruction of the rockshelters and to identify areas where we believe changes in the way we operate will be required. We will also provide our views on potential changes to legislative frameworks, as requested by the Committee.
- 20 We have already taken some immediate actions to improve our cultural heritage management and this is detailed further in section 5 below.

- 21 A separate board-led review is also underway to learn from what happened and to identify and implement further changes and potential areas of reform. The review will assess whether our internal cultural heritage management systems, processes and governance are fit for purpose, and it will identify the improvements needed to prevent any recurrence of the destruction of heritage sites of exceptional archaeological and cultural significance such as the Juukan rockshelters. The review will be made public and the conclusions will be applied as learnings across the Rio Tinto Group, as appropriate.
- 22 In considering possible changes that should be made to legislative frameworks, contractual agreements and new standards and ways of working, there is a critical and ongoing balance to be struck. On the one hand, it is essential to find more effective and flexible means to escalate and manage concerns regarding the preservation of the unique cultural heritage of Indigenous Australians. On the other, there needs to be a clear and predictable framework to enable long-term investment in, and the efficient operation of, mining projects that contribute so significantly to Australia. In meeting that challenge, governments, as well as the mining industry, Traditional Owners and the wider community all have a vital contribution to make.
- 23 Our purpose at Rio Tinto is to produce metals and minerals that are essential to human progress. In fulfilling this purpose, we have a responsibility to operate in ways that are safe, respectful, responsive, efficient and sustainable and to take due account of the interests of all of our stakeholders – our host governments and communities, shareholders, Traditional Owners, employees and customers and suppliers - as well as the environment. In this endeavour, we failed by our own standards at Juukan Gorge, and we are committed to rebuilding our relationship with Traditional Owners in a way that allows us to begin to restore our reputation for cultural heritage management.
- 24 Partnership will be core to this approach and Rio Tinto's senior leaders are meeting with the PKKP, other Traditional Owners, and many Indigenous leaders throughout Australia, along with other interested parties, to reflect on what has occurred and to listen to views on how we can learn and improve.

STRUCTURE OF OUR SUBMISSION

- 25 Our submission addresses the terms of reference according to the following structure:
- (a) Section 1 sets out who we are as an organisation, our values and approach to partnership and cultural heritage and the sentiment of recent engagements to provide necessary context for the remainder of our submission.
 - (b) Section 2 responds to Term of Reference (a) – it provides an overview of the operation of the AH Act and approvals provided as relevant to the Juukan rockshelters.
 - (c) Section 3 respond to Terms of Reference (b) to (e) inclusive – it sets out in detail:
 - (b) the consultation that Rio Tinto engaged in prior to the destruction of the caves with Indigenous peoples;*
 - (c) the sequence of events and decision-making process undertaken by Rio Tinto that led to the destruction;*
 - (d) the loss or damage to the Traditional Owners, Puutu, Kunti Kurrama and Pinikura people, from the destruction of the site;*
 - (e) the heritage and preservation work that has been conducted at the site;*
 - (d) Section 4 responds to Terms of Reference (f) to (j) inclusive – specifically, it addresses:
 - (f) the interaction of State Indigenous heritage laws with Commonwealth laws;*
 - (g) the effectiveness and adequacy of state and federal laws in relation to Aboriginal and Torres Strait Islander cultural heritage in each of the Australian jurisdictions;*
 - (h) how Aboriginal and Torres Strait Islander cultural heritage laws might be improved to guarantee the protection of culturally and historically significant sites;*
 - (i) opportunities to improve Indigenous heritage protection through the Environment Protection and Biodiversity Conservation Act 1999; and*
 - (j) any other related matters.*
 - (e) Section 5 sets out a summary of our indicative thinking on how we may improve and steps taken to date. The Board-led review will build on this analysis further.

1 SECTION 1 – OUR APPROACH

1.1 About Rio Tinto

26 Rio Tinto has operated in Australia for more than 100 years, and in the Pilbara for more than 50 years. We produce iron ore, bauxite, alumina, aluminium, uranium, diamonds and salt at sites and processing plants around the country. Our operations employ more than 19,000 people in Australia, including 1,450 Indigenous Australians.

1.2 Our values

27 Our values – safety, teamwork, respect, integrity and excellence – guide us in everything that we do.

28 Our relationships with local and regional communities are a key part of our projects and operations. We seek to obtain the ongoing support of our local and regional communities by developing strong and lasting relationships with them that are based on respect, open conversation and shared benefit.¹ This includes seeking to achieve the free, prior, and informed consent of Indigenous communities on whose land we operate.

1.3 Approach to cultural heritage management

29 Our internal standards and guidance emphasise the need to avoid disturbance of cultural heritage sites wherever practicable. Where avoiding disturbance is not practicable, we work with the Traditional Owners of the land we are impacting to minimise the disturbance and preserve sites. In practice, this means that an assessment is made, in consultation with the Traditional Owners and subject matter experts, of the cultural or archaeological significance of a site and of the cost of avoidance. While the objective is to minimise disturbance, some impacts are unavoidable, given the high density of cultural heritage sites, if mining is to proceed. Extraordinary measures may nevertheless be required and appropriate to preserve heritage sites of exceptional archaeological and cultural significance.

1.4 Shared success through partnership

30 The success of our Australian operations is inextricably linked to our partnerships with Traditional Owners. Regional and remote Indigenous communities throughout Australia face challenging economic and social circumstances accompanied by historic disadvantage. Often mining activity supports economic and social development in these communities, offering a way to address challenging circumstances and contribute to change and empowerment.

31 At Rio Tinto, we aim for our business to have a sustainable and meaningful impact. Our vision of responsible mining is one of safe, respectful and sustainable operations, underpinned by strong partnerships, with transparent and steady regulatory frameworks, creating shared wealth and progress for all stakeholders. When we achieve this shared success, the economic and social benefits can translate into investment in local community projects, the introduction of new skills and technologies, the establishment of education and training programmes and the creation of employment opportunities.

¹ The Way We Work, p. 22

- 32 We employ more than 1,450 Indigenous Australians, around 950 of whom work in our iron ore business in Western Australia. More than 12 per cent of our residential Pilbara workforce is Indigenous. We currently have 200 Aboriginal and Torres Strait Islander trainees, apprentices and graduates across our Australian business. Additionally, the Rio Tinto WA Indigenous Scholarship and Rio Tinto Indigenous Cadetship programmes support Indigenous people who are studying at a tertiary level. Our Iron Ore business spent A\$210 million on goods and services with 56 Indigenous businesses in 2019.

2 SECTION 2 – Term of Reference (a): Operation of the Aboriginal Heritage Act 1972 (WA) and approvals provided under the Act

33 This section of the submission seeks to address the following Term of Reference:

- (a) *the operation of the Aboriginal Heritage Act 1972 (WA) and approvals provided under the Act*

2.1 Overview of the legislative regime

(i) Interaction between the cultural heritage statutory regime and agreements with Traditional Owners

- 34 In Western Australia, rights to mine are conferred by the State as the owner of all minerals. The Brockman 4 area was long known to be prospective for iron ore and was included as one of the original sections of ML4SA granted in 1965 pursuant to the *Iron Ore (Hamersley Range) Agreement Act 1963 (WA)* (**Hamersley Range State Agreement**). It is under the framework of the Hamersley Range State Agreement (and subsequent State Agreements) that Rio Tinto has invested in exploration, mining, town and community development, roads, power, rail and port infrastructure across the Pilbara over decades. Those rights to mine are subject to compliance with applicable laws, including native title laws and cultural heritage laws, with the AH Act the key applicable cultural heritage law in Western Australia.
- 35 Rio Tinto recognised the PKKP as the Traditional Owners of their land, which included a large part of the proposed Brockman 4 development in which the Juukan rockshelters are located, a number of years before the PKKP's native title rights were formally recognised under Australian law. This included entering into a binding agreement with the PKKP nine years before the PKKP native title consent determination by the Federal Court under the *Native Title Act 1993 (Cth)* on 9 September 2015. The BIA had been entered into in 2006, see section 3.2 below.
- 36 In order to exercise rights to mine that may impact an Aboriginal heritage site and interact with native title rights, Rio Tinto's approach, as occurred in relation to Juukan 1 and Juukan 2, is to first seek the consent of the PKKP to its operations on their country. Rio Tinto's BIA of 2006 and its Participation Agreement executed with the PKKP in 2011, were aimed at accounting for and formalising Traditional Owners rights to an extent greater than their recognition under Australian law, including the right to manage cultural heritage.
- 37 The consent to operate on PKKP country allowed and continues to allow steps to be taken, by Rio Tinto and PKKP together, to manage impacts of mining activities, including to identify Aboriginal heritage sites and mitigate impacts of those activities. This identification and mitigation process is necessarily Traditional Owner led and involves deep engagement with both Traditional Owners and relevant specialists in relation to archaeology and anthropology.
- 38 Where it is not practicable to avoid impact on a heritage site due to location of an ore body, Rio Tinto seeks State consent under the AH Act for State approval for mining operations to proceed in that area, subject to mitigation measures, as occurred with Juukan 1 and Juukan 2. Rio Tinto obtains these consents in accordance with the agreed process set out in its formal agreements with Traditional Owners.

(ii) Requirements of the AH Act

- 39 The AH Act was enacted in 1972 and Rio Tinto's operations at Brockman 4 are subject to the AH Act. It is an offence under the AH Act to excavate, destroy, damage, conceal or in any way alter any Aboriginal site, unless authorised under section 16 or section 18 of the AH Act.
- 40 As noted above, Rio Tinto engages with Traditional Owners and relevant specialists to identify potential Aboriginal heritage sites in areas that are being explored or identified for mining. The information that is uncovered through that process is taken into account in mine design and planning. Where the location of an ore body would result in the likelihood of impact to a heritage site and it is impracticable to avoid that site, relevant approvals are sought.
- 41 Where a site is identified as requiring further investigation to assess its significance, section 16 of the AH Act authorises excavation of Aboriginal sites and facilitates further heritage research to establish the significance of the site. This authorisation is, however, limited to investigation or excavation purposes and does not permit impacts more generally, including for larger salvage (beyond test pitting) or for impacts associated with mining activities. Where land is proposed to be used in a way that would impact an Aboriginal site then Ministerial consent is required under section 18 from the Minister for Aboriginal Affairs, following a recommendation by the Aboriginal Cultural Material Committee (**ACMC**).
- 42 On behalf of the community, the ACMC evaluates the importance of places and objects alleged to be associated with Aboriginal persons. It recommends to the Minister places and objects which in the ACMC's opinion are, or have been, of special significance to persons of Aboriginal descent and should be preserved, acquired and managed by the Minister.²
- 43 Where the ACMC submits a notice to the Minister, the Minister must consider the recommendation and, having regard to the general interest of the community, shall either consent to the use of the land for the purpose required (or part of it) and impose conditions or wholly decline to consent to the use of the land which would impact the identified sites.³ A landowner, including a mining tenement holder, who is refused consent, or who disagrees with any conditions imposed, may apply for a review of the decision.⁴

2.2 Section 16 and section 18 approvals relevant to the Juukan rockshelters

- 44 For the purposes of development of the mine in this area, the Juukan 1 and Juukan 2 rockshelters were first identified by archaeological and ethnographic surveys conducted for Rio Tinto, both with the involvement of the PKKP, in March-May 2003.
- 45 Detail of the archaeological and ethnographic survey and report work conducted in relation to Juukan 1 and Juukan 2 rockshelters and the surrounding areas from 2003 through to 2020, for the purposes of mine development and expansion and

² Sections 39(1)(a) and (c) of the AH Act.

³ Section 18(3) of the AH Act. In *The State of Western Australia v Bropho* (1991) 5 WAR 75 at 94 (and cited by Martin J in *Wintawari Guruma Aboriginal Corporation RNTBC v The Hon Benjamin Sana Wyatt* [2019] WASC 33 at [122]), the WA Supreme Court has given a description of the Minister's task under s18(3).

⁴ Section 18(5) of the AH Act.

with the involvement of the PKKP in each of these activities, is set out in detail at sections 3.2-3.13 below.

- 46 On 1 May 2008, a section 16 permit was granted for the collection of Aboriginal cultural materials, test-pitting and excavation for the purposes of archaeological investigation at Juukan 1 and Juukan 2 (among other sites). This permit noted that additional ethnographic inspection was required to record the sites to a level suitable for presentation to the ACMC for the purposes of the section 18 application to disturb these sites.
- 47 On 17 October 2013, Rio Tinto submitted a section 18 notice to disturb a range of sites, including Juukan 1 and Juukan 2 (**Section 18 Notice**). This included an assessment of the significance of these sites. More detail on this application is set out in section 3.6 below.
- 48 Rio Tinto sought consent to disturb Juukan 1 and Juukan 2 on the express basis that consent to impact the sites was conditional on further salvage being carried out (consistent with archaeological and ethnographical recommendations and the PKKP's wishes).
- 49 On 31 December 2013, the Minister for Aboriginal Affairs granted Rio Tinto section 18 consent to use the Land, for the Purpose (being the development of Pit One at Brockman 4). This was subject to one condition - requiring Rio Tinto to report, on completion of mining, any sites impacted and any salvage that was conducted (**Section 18 Consent**).
- 50 Consultation with the PKKP on these section 16 and section 18 applications, and the PKKP's involvement in the archaeological and ethnographic work that was required to make these applications and obtain these approvals, is set out in detail in section 3.2-3.6 below.

2.3 Further approvals

- 51 As Pit 1 was planned to extend beyond Juukan 1 and Juukan 2, Rio Tinto had identified with PKKP some additional heritage sites of high ethnographic value to the PKKP that would be impacted in later stages of the pit development. These sites, within an area known as 'Purlykuti', would be impacted following the mining sequence planned for the shelters. Additional section 18 consents have been granted in respect of this area – as is explained further below.

2.4 Environmental approvals

- 52 While not directly relevant to Term of Reference (a) (which is focused on the AH Act), the *Environmental Protection Act 1986* (WA) (**EP Act**) also has a role in the protection and management of Aboriginal sites in Western Australia.
- 53 The term '*environment*' is broadly defined in the EP Act to include living things and their social surroundings.⁵ Social surroundings can include Aboriginal heritage (e.g., sites) and Aboriginal culture (e.g., traditional hunting and gathering).
- 54 The EP Act contains a number of offence provisions such as causing serious or material environmental harm.⁶ Due to the broad definition of '*environment*', direct

⁵ Section 3 of the EP Act.

⁶ Sections 50A and 50B of the EP Act.

or indirect detrimental impacts on Aboriginal heritage may constitute '*environmental harm*'.⁷

- 55 The implementation of a proposal in accordance with a Ministerial Statement provides a defence to the offence of causing serious or material environmental harm.⁸ The process for obtaining a Ministerial Statement is set out in Part IV of the EP Act.
- 56 The Part IV process may involve consideration of the effect of a proposal on Aboriginal heritage as 'Social Surroundings' is an environmental factor to which the Environmental Protection Authority (**EPA**) will have regard in conducting its assessment.
- 57 Rio Tinto initially operated the Brockman 4 Mine under Ministerial Statement 717 (**MS 717**), which was published on 24 March 2006. The implementation conditions of MS 717 were superseded by Ministerial Statement 1000 (**MS 1000**), which was published on 11 March 2015.

⁷ Sections 3 and 3A(2) of the EP Act.

⁸ Section 74A of the EP Act.

3 SECTION 3 - Terms of Reference (b) to (e): Consultation engaged in with the PKKP, sequence of events and decision-making process that led to impacts, preservation work undertaken

58 This section of the submissions seeks to address the following Terms of Reference:

- b) *the consultation that Rio Tinto engaged in prior to the destruction of the caves with Indigenous peoples;*
- c) *the sequence of events and decision-making process undertaken by Rio Tinto that led to the destruction;*
- d) *the loss or damage to the Traditional Owners, Puutu, Kunti Kurrama and Pinikura people, from the destruction of the site;*
- e) *the heritage and preservation work that has been conducted at the site;*

59 Throughout this section, where we provide detail on the facts as we understand them, we refer to Rio Tinto as a 'catch all' for Rio Tinto entities and also Rio Tinto personnel. We have done so for ease of reading but also to protect the privacy of our employees who have been involved in these matters.

60 In relation to whether a site was considered 'unavoidable', we note that different terminology is used across different standards and documents, such as whether it was 'possible' to avoid the site, or whether it was 'practicable'. For the sake of consistency, we use the term 'practicable' throughout this submission, as per Rio Tinto's Communities and Social Performance Standard.

3.1 Rio Tinto's Brockman 4 mine and the Juukan rockshelters

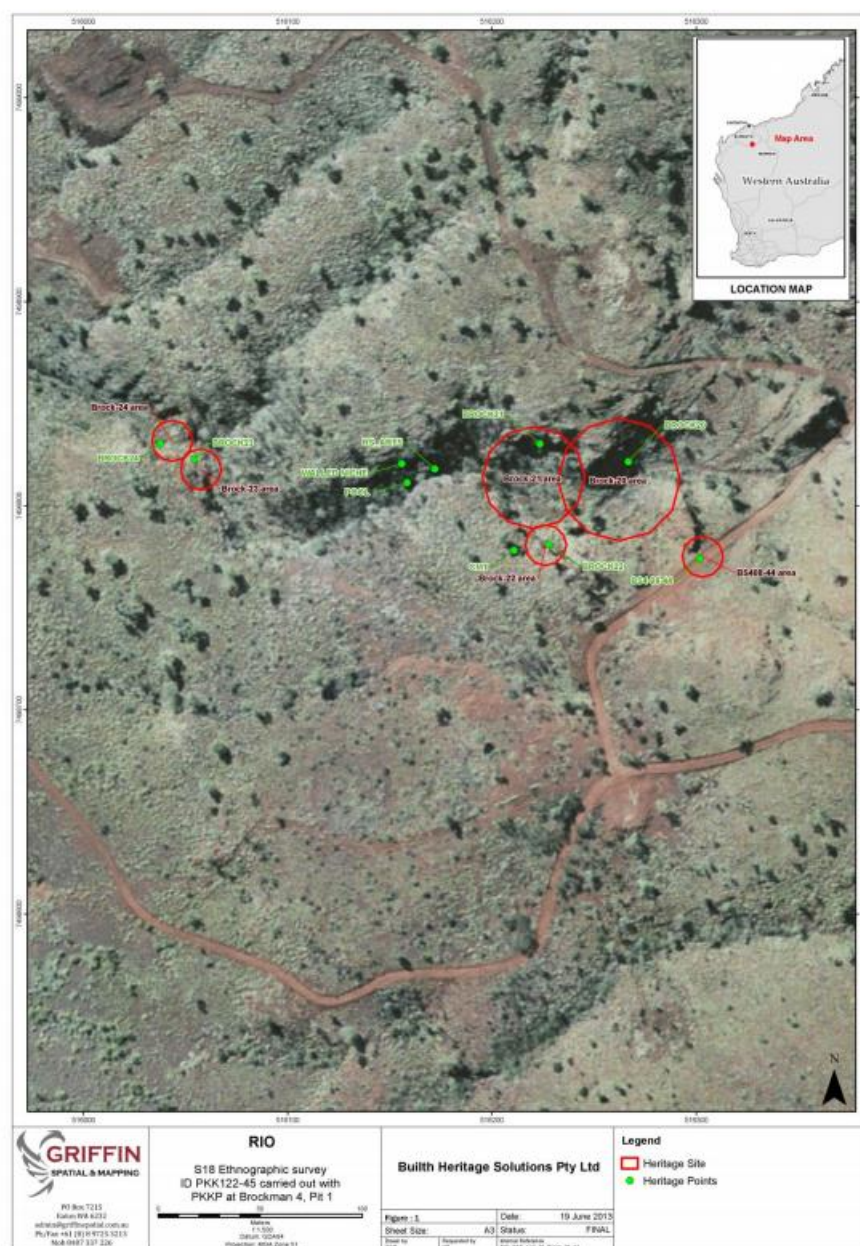
61 Rio Tinto's Brockman 4 mine is located partly on the traditional land of the PKKP and partly on the traditional land of the Eastern Guruma people in the Pilbara region of Western Australia. The relevant mining lease (**ML4SA**) has been held by Rio Tinto since the 1960s.⁹

62 Juukan 1 and Juukan 2 are within section 125 of ML4SA.

63 The Juukan Gorge also contains other rockshelters (Juukan 3, Juukan 4 and Juukan 5) and other potential cultural heritage places. The end of the Juukan Gorge connects to the Purlykuti Creek, which is also a culturally significant area for the PKKP. The following map of the Juukan Gorge appeared in a report prepared by Dr Heather Builth (now Cultural Heritage Manager, PKKP Aboriginal Corporation (**PKKPAC**)) but at the time of the report consultant anthropologist) entitled 'Ethnographic Site Identification Survey Report for Brockman 4 Pit 1 area – Final version' dated 30 July 2013 (**Builth 2013 Report**).

⁹ Iron Ore (Hamersley Range) Agreement Act 1963 (WA).

Map A-4: Archaeology Survey Area of Juukan valley



3.2 2003 – 2006: early years of engagement, first cultural heritage surveys preceding the Binding Initial Agreement

(i) Establishing the Central Negotiating Committee and PKKP representation by YMAC

- 64 Rio Tinto began engaging with the PKKP at least as early as 2003 with a view to reaching an agreement. That year, a Central Negotiating Committee (**CNC**) was established at the proposal of ten Traditional Owner groups as a means of engaging with Rio Tinto regarding its proposed mining developments in the Pilbara.
- 65 During this time, with other Traditional Owners represented on the CNC, the PKKP engaged the Pilbara Native Title Service (**PNTS**) to represent them in matters of

native title and cultural heritage.¹⁰ PNTS was a division of the Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation (since December 2008 the Yamatji Marlpa Aboriginal Corporation (**YMAC**)), the native title representative body for the Yamatji and Pilbara regions under the *Native Title Act 1993* (Cth) (**NT Act**). It is Rio Tinto's understanding that YMAC represented the PKKP in heritage matters from this time up until July 2019.

(ii) First cultural heritage surveys and reports completed

- 66 Since engagement between Rio Tinto and PKKP commenced, the PKKP has been aware of and, in most instances, actively involved in archaeological and ethnographic surveys commissioned by Rio Tinto to assess the significance of the Juukan rockshelters and indeed many other places of significance. This work was conducted for the purpose of identifying sites and assessing their significance. Where avoidance was not practicable, for example due to proximity to the ore body, measures are put in place to mitigate impacts and preserve, as far as possible, the archaeological and ethnographic value of the sites.
- 67 In relation to the Juukan rockshelters this work has included numerous archaeological and ethnographic surveys and reports and research prior to seeking statutory consent to impact. The surveys conducted noted that the Juukan rockshelters were to be impacted by the Brockman 4 mine development as they were within the mine footprint. As such, consent to impact the sites was sought on the basis that extensive salvage would be conducted to mitigate impacts by analysing, cataloguing and preserving artefacts and creating a documentary record of the site. This work was carried out in collaboration with leading experts and the PKKP following the grant of the statutory consent authorising impacts. The findings of this work were shared with the PKKP, reported to the Western Australia Department of Aboriginal Affairs and presented to the Australian Archaeological Association on several occasions. It was only after the completion of the salvage works in 2014 that Rio Tinto internally cleared Juukan 1 and Juukan 2 for mining activities.
- 68 In March 2003 Rio Tinto commenced the consultation, identification and evaluation processes necessary to obtain any AH Act consents required to develop Brockman 4. This initial survey work was to facilitate geological exploration.
- 69 Rio Tinto engaged Gavin Jackson Pty Ltd to perform an archaeological survey (through two field trips) to:
- (a) locate and record any Aboriginal archaeological sites (including in the area of Juukan 1 and Juukan 2);¹¹
 - (b) determine their archaeological significance; and
 - (c) assist in the development of site avoidance and management strategies of those sites where necessary.
- 70 These field trips were undertaken in cooperation with PKKP representatives.
- 71 In parallel, in early May 2003, Rio Tinto commissioned an ethnographic (work program clearance) survey by Mr Robin Stevens of the PNTS with input from PKKP representatives. The PKKP representatives accompanying Mr Stevens

¹⁰ Note that this was not without controversy: see *Chubby v State of Western Australia* [2015] FCA 964.

¹¹ Within the meaning of section 5 of the AH Act.

were acknowledged to have the necessary authority to speak to cultural heritage matters within the survey area.

72 The high-level ethnographic report prepared by Mr Stevens did not refer specifically to Juukan 1 or 2, or any of the specific places within what would later be known as the Juukan complex.¹² It did note *'that there has not been a 100 percent archaeological survey of the area, and there may be unrecorded archaeological sites which also have ethnographic significance'*.

73 The archaeological survey findings were set out in a 2004 report. This identified Juukan 1 and Juukan 2 as likely to be Aboriginal archaeological sites¹³ of *'moderate to high degree of archaeological significance'* with Juukan 1 containing *'a significant amount of cultural material and may have some potential to yield a stratified cultural deposit'*. A copy of the Jackson and Fry report was provided to PNTS in around April 2005. Around that time, Rio Tinto provided notification to the Department of Indigenous Affairs (as it then was) of various Aboriginal sites (including Juukan 1 and Juukan 2) and of the completion of the 2003 and 2004 archaeological and ethnographic reports referred to above. At the request of the PNTS, copies of the reports were not provided to the Department.

(iii) Binding Initial Agreement

74 Between 2004 and 2006, Rio Tinto negotiated with the CNC and individual Traditional Owners working groups regarding commercial terms of an agreement. Rio Tinto funded negotiation support to the groups to ensure meaningful participation in the agreement making process and to enable them to obtain advice from experienced advisors given the potential negotiating disparity between the parties.

75 Whilst it was Rio Tinto's preference to adopt a project by project approach, the company accepted the request of the Traditional Owners groups to negotiate 'whole of country' or claim wide agreements. Many offers and counter offers were made by Rio Tinto and the CNC on commercial terms, including financial compensation to groups for all future mining activity on their country. The financial compensation approach was then put to Traditional Owners groups and each group agreed to a BIA. The PKKP BIA was signed on 28 June 2006.

76 Brockman 4 was identified by Rio Tinto as central to its expansion plans. For this reason, Brockman 4 was listed as a 'Priority Project' in the BIA and Rio Tinto obtained PKKP consent to mining in the Brockman 4 area. 'Brockman 4' was defined in the BIA to include section 125 of ML4SA (on which Juukan 1 and Juukan 2 are located).

77 In relation to Priority Project operations, PKKP agreed to conduct cultural heritage surveys and not oppose any section 18 application, provided Rio Tinto used its reasonable endeavours to minimise impacts of those operations on Aboriginal heritage sites and consulted with the PKKP about the means of doing so. This was a direct function of the consent to operate on PKKP country that the BIA represented (in exchange for which Rio Tinto agreed to provide financial compensation to the PKKP).

¹² As discussed below, the Juukan complex comprises Juukan 1, Juukan 2, Juukan 3, Juukan 4 and Juukan 5.

¹³ Within the meaning of section 5 of the AH Act.

- 78 Having secured the PKKP's consent to Brockman 4 operations, and after years of detailed technical and commercial feasibility studies, in 2007, Rio Tinto resolved to invest USD 1.47 billion in the development of Brockman 4.

3.3 2007-2008 – Further surveys of Juukan 1 and Juukan 2

- 79 In 2007, Rio Tinto commissioned archaeological surveys and a report from archaeologist Dr Slack of Scarp Archaeology. One of the purposes of this work (amongst others) was to identify any existing Aboriginal sites. This work formed part of the consultation and evaluation processes necessary to obtain AH Act approvals for development of Brockman 4.
- 80 Scarp Archaeology conducted eight surveys, in cooperation with PKKP and Eastern Guruma representatives (as appropriate) between February and September 2007. Salvages were also conducted at certain known sites.
- 81 By March 2008, Rio Tinto was contemplating applying for section 18 consent to permit the excavation, salvage and ultimate removal of certain archaeological sites, including Juukan 1 and Juukan 2. However, ethnographic inspection of those sites was required to present the sites to the APMC for assessment of their significance, as part of any section 18 notice. To this end, an ethnographic survey was conducted by Roina Williams of PNTS to *'ascertain the best mitigative cultural heritage management strategy'*.
- 82 On 23 April 2008, Ms Williams provided preliminary advice to Rio Tinto in relation to the ethnographic site identification survey of sites in the Brockman 4 region. Ms Williams recommended, among other things, that test-pitting be performed on Juukan 1 and Juukan 2.¹⁴ This would require approval under section 16 of the AH Act.
- 83 In May 2008, Scarp Archaeology produced a report in respect of the 2007 surveys. This noted that all sites identified were recorded to an 'avoidance level', as per the scope of works.

3.4 Section 16 approval and subsequent survey work

- 84 Rio Tinto was granted a section 16 permit on 1 May 2008. This authorised the collection of Aboriginal cultural material, test-pitting and excavation for the purposes of archaeological investigation at 12 rockshelters, including Juukan 1 and Juukan 2.
- 85 Rio Tinto engaged Dr Slack of Scarp Archaeology to conduct archaeological test excavations of the rockshelters (including Juukan 1 and Juukan 2) and to carry out additional recording and mapping at 20 open artefact scatter sites. Dr Slack was asked to record his findings in sufficient detail for the purposes of a section 18 notice. Section 18 consent was required because some of the archaeological sites, including Juukan 1 and Juukan 2, would be *'situated within the actual pit and waste dumps [so] avoidance [was] not possible'*.
- 86 Dr Slack and his team conducted two field trips in collaboration with the PKKP. Employees of Rio Tinto and members of the PKKP were present on both field trips.

¹⁴ Preliminary advice for an ethnographic site identification survey of sites in Brockman Syncline 4 Proposed Mine Development Project: Tenement AML 70/00004; Sec.123, 125 & 279, Roina Williams, PNTS, April 2008 (***Williams 2008 Preliminary Advice***).

- 87 The results of these two field trips were recorded in a report dated October 2008 (**Scarp 2008 Report**). This report identified that Juukan 1 and Juukan 2 had high archaeological significance, with occupation at Juukan 1 dating back at least 32,000 years, and Juukan 2 from at least 22,000 years. A copy of this report was provided to PNTS in March 2009.
- 88 For Juukan 1, the Scarp 2008 Report advised that *'if this site [Brock-20] is to be impacted in any way that further salvage excavations are completed prior to its destruction'*. For Juukan 2, it was recommended that the site be protected unless unavoidable, in which case, *'extensive salvage excavations'* would be required beforehand.
- 89 As Rio Tinto considered the disturbance of the sites the subject of the Scarp 2008 Report to be unavoidable because of their location in relation to the ore body, Rio Tinto again commissioned Ms Williams of the PNTS to conduct an ethnographic survey for the purposes of a section 18 notice.
- 90 Rio Tinto commissioned the PNTS (through Ms Williams) to conduct a further ethnographic survey over three days in November 2008. Representatives of Rio Tinto and representatives of the PKKP participated in the survey. Ms Williams produced a report of her findings in December 2008 (**Williams December 2008 Report**).
- 91 The Williams December 2008 report noted:
- (a) that avoidance of these sites was not possible as they were located within an area designated as a mine pit and waste dump;
 - (b) Rio Tinto would seek a conditional section 18 consent to fully excavate their research potential;
 - (c) the Juukan complex, which included Juukan 1 and Juukan 2, was of high ethnographic significance and had the potential to contain an *'enormous museum' of information about their ancestors' work and lives*.
- 92 The Williams December 2008 Report endorsed the recommendation of the Scarp 2008 Report for salvage excavations to occur at Juukan 1 and Juukan 2; that the salvaged artefacts be *'stored on country in a Keeping Place'*; and that the salvage and excavation of the sites be filmed as a record for posterity.
- 93 Rio Tinto understood that the PKKP representatives involved in this survey were those with the closest connections to Juukan 1 and Juukan 2. One of Ms Williams' conclusions was that *'thorough consultation between [Rio Tinto] and members of the PKKP working group has taken place both in the field and at working group meetings with regards to this proposed section 18 submission at Brockman 4'*.

3.5 2010-2011: Participation Agreement negotiation and execution

- 94 Negotiation of the BIA was a precursor to negotiation of a broader agreement with the PKKP. From at least May 2010, YMAC, the PKKP and Rio Tinto met to negotiate the Participation Agreement. The PKKP authorised its representatives to enter into the Participation Agreement in early November 2010. It was executed on 18 March 2011. At the time, this was regarded as a landmark agreement involving genuine profit sharing and mechanisms for traditional owner involvement in land management generally and cultural heritage specifically.
- 95 On the same day, the RFD was executed by Rio Tinto with a broader set of Traditional Owners including the PKKP.

(i) RFD

- 96 The RFD establishes seven Regional Standards intended to govern commitments at a regional level between Rio Tinto and those Traditional Owners groups that “opt-in”.¹⁵ PKKP 'opted-in' to the RFD. The Regional Standards concern seven topics, one of which is cultural heritage management. The others are employment and training, business and contracting, environmental management, life of mine planning, cultural awareness training and land access.
- 97 The Regional Standards contained both Specific Commitments (which can be enforced by application to a court) and Implementation Commitments (where alleged non-compliances can be referred to an independent expert for advice).
- 98 The Cultural Heritage Management Regional Standard includes obligations on Rio Tinto to develop Cultural Heritage Management Plans, employ or retain professional heritage staff, and maintain a heritage management system. These are each Specific Commitments.
- 99 It also includes Implementation Commitments to:
- (a) undertake heritage surveys at the earliest practicable stage of project development and identify sites of special significance;
 - (b) give planning consideration to the likely impact of mining activity on Aboriginal cultural heritage generally, and specific Aboriginal sites in particular;
 - (c) and take all practicable measures to avoid sites of special significance.
- 100 "Practicable" in the RFD is defined as what Rio Tinto, acting reasonably, considers practicable, taking into account the following facts:
- (a) any views and concerns of the Opt-In Groups received by Rio Tinto;
 - (b) safety;
 - (c) operational and business, constraints, timelines and objectives;
 - (d) cost and delay;
 - (e) legislative, regulatory and other Approval requirements in respect of Rio Tinto's Pilbara Iron Ore Business including requirements of Government Agencies; and
 - (f) geographical, engineering and construction constraints.
- 101 Where avoidance is not Practicable, Rio Tinto will consult with the relevant 'Opt-In Group' about how the heritage values of Sites of Special Significance may be preserved or recorded or, where there is a cultural or scientific basis for doing so, minimising or mitigating the loss or diminution of those heritage values.
- 102 The Cultural Heritage Management Regional Standard (**CHMRS**), a Specific Commitment under the RFD, notes that:
- (a) it will generally not be Practicable to avoid an Aboriginal Site / Site of Special Significance that is located on an ore body;
 - (b) there is more flexibility in the development of infrastructure and associated operations such that those things can sometimes be moved

¹⁵ Other Regional Standards are: Employment and Training, Business Development and Contracting, Land Access, Environmental Management, Cultural Awareness Training and Life of Mine Planning.

or re-designed to avoid Aboriginal Sites / Sites of Special Significance but there are engineering, economic and other constraints (such as environmental considerations) that limit the extent to which it is Practicable to move those things;

- (c) in giving effect to the Implementation Commitment, including to take Practicable measures to avoid Aboriginal Sites / Sites of Special Significance, Rio Tinto may need to incur cost, provided that cost is reasonable in the circumstances;
- (d) the extent of the effort and cost involved in avoiding or mitigating impacts on an Aboriginal Site / Site of Special Significance needs to be balanced against the level of significance of that place. Generally, the higher the significance, the greater the relative level of effort and cost that will be justified;
- (e) preservation or recording of the heritage values, or minimising or mitigating the loss or diminution, of an Aboriginal Site / Site of Special Significance does not mean that the site may not be disturbed or destroyed.

(ii) Participation Agreement

- 103 The Participation Agreement replaced the BIA. It contains a detailed framework governing the relationship between Rio Tinto and the PKKP.
- 104 In the Participation Agreement, the PKKP provide consent to the conduct of mining operations on PKKP country. In return, Rio Tinto agrees to make '*Mining Benefit Payments*', which are managed under a Benefits Management Structure.
- 105 In respect of cultural heritage approvals, in broad terms the Participation Agreement provides that:
 - (a) the PKKP agree with and consent to and support the grant or modification of any cultural heritage approval;
 - (b) Rio Tinto must give the PKKP notice of any State Heritage Application¹⁶ and must use best endeavours to provide the PKKP notice of any Key Approval Application.¹⁷ The PKKP may make comments on those applications, provided they do not suggest they oppose the application (in light of the overarching consent provided), and Rio Tinto must have regard to such comments; and
 - (c) before making any application for the permanent protection of an Aboriginal site, the PKKP must obtain Rio Tinto's consent.
- 106 The Participation Agreement also includes a Cultural Heritage Protocol setting out matters such as:
 - (a) the appointment of a Heritage Body for the PKKP to serve as a point of engagement with Rio Tinto regarding heritage surveys;
 - (b) the (optional) establishment of a Heritage Sub-Committee with representatives from PKKPAC and Rio Tinto to manage and oversee the

¹⁶ A 'State Heritage Application' is an application under section 16 or section 18.

¹⁷ A 'Key Approval Application' is an application under section 38 of the EPA Act, section 68 of the EPBC Act or section 16 or section 18.

- conduct of heritage surveys, consultations and other cultural heritage management procedures; and
- (c) the procedure for the initiation and conduct of archaeological and ethnographic heritage surveys.
- 107 The Cultural Heritage Protocol also requires the Heritage Body to assist Rio Tinto to comply with any conditions included as part of a consent under section 16 or section 18 of the AH Act.
- 108 Schedule 16 of the Participation Agreement, identifies certain areas of '*especially high cultural significance*' to the PKKP as 'Rights Reserved Areas' (**RRAs**). None of Juukan 1, Juukan 2, or the Juukan Gorge are identified as RRAs in Schedule 16 of the Participation Agreement.
- 109 As outlined above, Rio Tinto is required to obtain Ministerial consent under section 18 of the AH Act to excavate, destroy, damage, conceal or in any way alter an Aboriginal site (as defined in section 5 of the AH Act), regardless of the site's categorisation in the Participation Agreement.
- 110 The Participation Agreement calls for the establishment of a Local Implementation Committee (**LIC**) to implement the Participation Agreement. The LIC is intended to implement and monitor of contractual commitments under the Participation Agreement and assist in implementing the Regional Standards established in the RFD.
- 111 The LIC comprises six representatives of the PKKP and three Rio Tinto representatives. The LIC is required to meet at least once every six months and makes decisions by consensus.

(iii) Indigenous Land Use Agreement

- 112 On 15 November 2012, certain Rio entities, the PKKP¹⁸ and PKKPAC (as the Local Aboriginal Corporation (**LAC**) for the PKKP), entered into the Rio Tinto and PKKP Indigenous Land Use Agreement (**PKKP ILUA**). On 24 April 2013, the PKKP ILUA was registered by the National Native Title Tribunal.
- 113 ILUAs are voluntary agreements which, once registered, create certain statutory benefits including satisfying procedural requirements under the NT Act to allow development on land to proceed. These procedural requirements apply prior to and after a native title group being determined to hold native title, so it is common for an ILUA to be executed ahead of a native title determination.
- 114 The ILUA mirrors certain clauses of the Participation Agreement. In particular, it provides the PKKP's consent to, and support of, the parts of Rio Tinto's Pilbara iron ore business within the agreement area, including consent to any necessary approvals for the impact or destruction of Aboriginal cultural heritage. The ILUA also contains some formal clauses needed to enable registration under the NT Act.

3.6 2012-2013: Section 18 Consent for Juukan 1 and Juukan 2

- 115 During 2012 and 2013, Rio Tinto continued to progress its plans for Brockman 4, Pit 1, including consideration of the required approvals to progress works.

¹⁸ Angelina Cox, Angie Cox, Annabelle Stewart, Arness James, Charleston Cox, Darryl Hughes, Gary Hughes, Harold Ashburton, Maudie Dowton, Mitchell Drage and Maurice Daublin on their own behalf as Registered Native Title Claimants and on behalf of the PKKP.

(i) Discussions regarding pit designs and information provided to PKKP

116 As part of the continuing incremental development of the Brockman 4 mine, in early 2012, the Mine Planning team engaged with the Heritage team on proposed plans for the design of Pit 1, which included the Juukan 1 and Juukan 2 areas. At this time, a range of pit options were considered. During 2012 and 2013, Rio Tinto progressed its plans for Brockman 4, Pit 1 in the Juukan Gorge area and four pit options were considered. Three avoided the shelters to varying distances. The fourth option impacted the rockshelters in order to access higher volumes of high-grade ore, and was the option that was chosen by Rio Tinto.

117 At a LIC meeting on 28 March 2013, Rio Tinto explained it may submit a section 18 notice that may cover Juukan 1 and Juukan 2, amongst other sites, with the aim for a ruling by end 2013. PKKP were also informed that Rio Tinto was likely to conduct additional excavation on significant heritage sites (including Juukan 1 and Juukan 2) if a section 18 consent was required and granted.

(ii) Further ethnographic work for Section 18 Notice – Dr Builth report

118 Around May 2013, for the purposes of the section 18 application, YMAC engaged Dr Heather Builth (an anthropologist who, at that time, was an independent consultant at Builth Heritage Solutions Pty Ltd) to conduct a site identification level ethnographic survey with the PKKP. Rio Tinto facilitated and paid for the survey. In June, a one-day Site Identification Survey of Brockman 4 Pit 1 of 7 sites (including Juukan 1 and Juukan 2) was undertaken by Ms Builth, accompanied by PKKP elders (including four who had attended the November 2008 survey with Ms Williams).

119 On 24 June 2013, Dr Builth sent a Preliminary Advice Report for the PKKP Survey: Brockman 4 Pit 1 Ethnographic Site Identification Survey 2013 (*Preliminary Advice Report*). This indicated that the valley that included Juukan 1 and Juukan 2 was in itself significant and added a further '*depth of meaning*' to the sites that were already considered significant. Dr Builth recommended, at the request of the PKKP, that salvage and excavation should occur on both Juukan 1 and Juukan 2 to extend the knowledge of occupation on the sites.

120 She also recommended, as requested by the PKKP, that further surveying take place to consider a 'previously unrecorded rockshelter, niche, culturally important rock hole, and culturally modified trees observed in the area but not known to be recorded'.

(iii) Further communication of section 18 plans to PKKP

121 On 16 July 2013, a LIC meeting was held and six PKKP representatives attended. Rio Tinto gave a cultural heritage update, including that a decision in respect of Section 18 Consent was expected by the end of 2013 and fieldwork for development of this part of the mine would commence March 2014.

122 It was Rio Tinto's understanding based on that meeting that the PKKP supported the section 18 and the notion of further excavation, and that it was understood by the PKKP that the consequence of this would be disturbance to the sites in the future.

123 The PKKP had been involved with multiple section 18 notices prior to the Juukan 1 and Juukan 2 application and Rio Tinto believed they understood the process and consequences involved.

(iv) Preparing for Section 18 Notice: Built 2013 Report

- 124 On 10 September 2013, the Built 2013 Report was provided to Rio Tinto by YMAC.
- 125 This recorded that Dr Built had been engaged by YMAC to conduct the ethnographic survey of seven archaeological sites (including Juukan 1 and Juukan 2) with the PKKP. It noted:
- (a) the sites were not able to be avoided by the proposed development; and
 - (b) the report was prepared so that the results of an ethnographic survey could be included as part of the materials submitted in connection with the application for section 18 consent.
- 126 The Built 2013 Report included the following observations and recommendations:
- [Rio Tinto] ethnographic scope of works states that its aim is to show representatives of the PKKP group the sites proposed for disturbance due to the mine development program. RTIO seek their ethnographic comment and opinions on what mitigative measures should take place prior to disturbance.*
- The survey was carried out with appropriately experienced PKKP representatives including elders and/or direct relatives of those Puutu Kunti Kurrama who regularly used to visit this country and knew the stories, the people and the history of their country...*
- Discussion with the PKKP representatives during the survey and subsequently has verified the high level of significance of the Purlikuti and Juukan area here to the group, as supported by the longevity of the rockshelter occupation here. The proximity of these sites to the Purlikuti creek support their significance from an ethnographic perspective.*
- 127 The Built 2013 Report records a request of the PKKP 'for more extensive survey coverage to ensure that the area is properly assessed and all possible cultural heritage places recorded prior to the present landscape destruction during the proposed Brockman 4 Pit 1 excavation.' It was noted that if this recommendation for additional survey is accepted the PKKP would request that certain additional sites be recorded as an ethnographic site.

(v) Submission of Section 18 Notice

- 128 On 3 October 2013, Rio Tinto emailed a draft copy of the section 18 notice to YMAC.
- 129 In the email, Rio Tinto requested YMAC's comments on the draft section 18 notice by 11 October 2013, noting Rio Tinto's intention to lodge the application on 17 October 2013. Under the draft section 18 notice, Rio Tinto sought consent to impact six sites; Brock 20 – 24 (being, Juukan 1 and Juukan 2 and the other 3 rockshelters in the Juukan complex), and an unrelated rockshelter, BS4-08-44.
- 130 The draft application Rio Tinto provided to YMAC (proposed to be provided by a number of emails due to size) comprised:
- (a) a section 18 notice,
 - (b) submissions in support of the Section 18 notice; (**Submissions**)
 - (c) a consultation table attachment to the submissions,
 - (d) a cover letter; and

- (e) four other documents being a *'Land Map'*, *'Purpose Map'*, *'Previous Surveys Map'* and *'Location Map'*.
- 131 The Submissions set out the archaeological and ethnographic work conducted to date, and PKKP participation and consultation. They also note that 'Further salvage excavation' is required for Juukan 1 and Juukan 2.
- 132 On 17 October 2013, Rio Tinto submitted the Section 18 Notice. The land was described as 'a total area of approximately 0.0109 km²...situated within... lease AML70/00004' (**Land**). The listed purpose was *'the development of Pit One at Brockman 4'* including *'all associated and incidental work and activities'* (**Purpose**).
- 133 A review of the application documents shows that there was some incorrect information provided in the Heritage Information Submission Forms (referred to as 'Site Recording forms') forms attached to the Section 18 Notice. It appears the Heritage Information Submission Form for Juukan 2 included information related to Juukan 1 instead of information related to Juukan 2 in some sections of the form.
- 134 A number of Aboriginal sites were identified as being on the Land, specifically:
- (a) Brock 20, 21, 22, 23 and 24 (being Juukan 1 and Juukan 2 and the other 3 rockshelters in the Juukan complex); and
 - (b) BS4-08-44 (an unrelated rockshelter included within the application).
- 135 Rio Tinto's submission included:
- (a) a description of the 'potential effects on Aboriginal sites', including 'the impact/disturbance' of Juukan 1 and Juukan 2;
 - (b) the strategies to 'minimise or avoid identified sites' include excavation and salvage work; and
 - (c) as attachments, the Bulth 2013 Report, and 2008 Slack Report.
- 136 PKKP were notified by letter (October 2013) and at the next LIC meeting (November 2013) that the Section 18 Notice had been lodged.
- 137 On 31 December 2013, the Minister for Aboriginal Affairs granted Rio Tinto a Section 18 Consent to use the Land, for the Purpose.
- 138 The Consent included one condition - a written report to the Registrar within 60 days of the completion of the Purpose, advising whether and to what extent the Purpose has impacted on all or any Aboriginal sites located on the Land. While salvage and excavation were not conditions of the Section 18 Consent, the report was to include a 'detailed description' of 'where any Aboriginal Site has been subject to archaeological or cultural salvage, when and how such salvage took place...'.
- 139 The Section 18 Consent also noted that 'based on current knowledge the Purpose will impact upon two Aboriginal sites within the meaning of section 5 of the [AHA] (Sites) on the Land'. The sites were Juukan 1 and Juukan 2.
- 140 Of all the Juukan complex sites presented in the section 18 application, only Juukan 1 and Juukan 2 were determined by the APMC to be 'Aboriginal sites' for the purposes of the AH Act and so referenced in the Section 18 Consent.

3.7 2014: Post Section 18 Consent salvage and preservation commences

- 141 Following the grant of the Section 18 Consent, Rio Tinto commenced preparations to further excavate and to undertake salvage works at Juukan 1 and Juukan 2.

This was done to mitigate, as far as practicable, the impacts to the shelters themselves.

- 142 Throughout the extensive salvage and research work that continued until 2019, the expansion of mining at the Brockman 4 mine moved westerly towards Juukan 1 and Juukan 2.

(i) Field Trips 1 and 2

- 143 In March – April 2014, Rio Tinto engaged Dr Michael Slack to prepare for the excavation of Juukan 1 and Juukan 2.

- 144 The first salvage excavation trip, conducted by Dr Slack with PKKP involvement, occurred from 26 May to 5 June 2014. On this trip, salvage work was conducted only on Juukan 2 (Brock-21). In his preliminary advice on this trip, prepared in June 2014, recorded '*[t]he deposit at BROCK-21 proved to be highly significant, with numerous hearths, over 300 flaked stone artefacts recovered, and abundant faunal remain*'.

- 145 From 1 to 12 July 2014, Dr Slack conducted the second salvage and excavation trip at Juukan 1 and Juukan 2 (Brock-20 and Brock-21) with PKKP participation. Dr Slack conducted further excavation at Juukan 1, but described those results as '*disappointing*' in his preliminary advice on the trip (dated July 2014). For Juukan 2, however, he recorded:

the results of the C14 dating and further excavations completed for this trip have concluded that this site is one of the most archaeologically significant sites in Australia. Further excavations at the site are recommended if the site cannot be protected.

- 146 The findings from the second salvage excavation trip were shared at the LIC meeting just two days later on 14 July 2014. The minutes record that the following update was provided:

Significant occupation was evident at the Salvage site [Brockman 21]. Evidence included radio Carbon dating came back at 43,000 years, in this particular site, found human hair braided twine, found artefact with resin on a stick, animal bone, a bone tool, possible dating back to 40,000yrs and a kangaroo poo, dating back 40,000yrs.

- 147 These findings by Dr Slack clearly showed a significant increase in understanding, and communication to Rio Tinto and the PKKP, of the archaeological significance of these sites, in particular Juukan 2.

(ii) Field Trip 3

- 148 On 23 July 2014, Dr Slack wrote to Rio Tinto indicating that a third salvage was advisable in light of findings to date. Rio Tinto agreed to fund the third excavation salvage trip as recommended by Dr Slack. This occurred between 5 to 14 August 2014.

- 149 On 3 September 2014, Dr Slack's preliminary advice on the third survey was provided to Rio Tinto. In that advice, Dr Slack confirmed that Juukan 1 and Juukan 2 were fully salvaged. Following this confirmation, the Rio Tinto Heritage team ceased active management of Juukan 1 and Juukan 2 and internally authorised ground disturbance in line with the Brockman 4 mine plan (which had long underpinned Rio Tinto's engagement with PKKP in respect of the sites).

- 150 In terms of internal consideration, the reports on Dr Slack's field trips were sent to the 'RTIO Communities Heritage Compliance' mailing list. The findings were also shared more broadly internally for instance with managers of the Communities team, members of the Technical Services team and various other areas of the business.
- 151 As described at para 112 above, in terms of sharing with the PKKP, the findings from the first two excavations were presented to the LIC meeting in July 2014. At section 2.8(ii) below we also address the communication of findings to PKKP.
- 152 Although there was no requirement under the Section 18 Consent to report at this time, on 7 October 2014 Rio Tinto provided Dr Slack's three preliminary advices to the Department of Aboriginal Affairs, Western Australia (**DAA**) as an update following the mitigation measures.
- 153 Since late July 2014, Rio Tinto has made five applications for section 18 consent in the Purlykuti area. PKKP were involved in associated survey work and received notification of the applications. To date, four section 18 consents have been granted. One application is pending broader environmental approval processes.

3.8 2014-2015: Environmental approvals for operating the Brockman 4 Mine

- 154 Rio Tinto initially operated the Brockman 4 Mine under MS 717, which was published on 24 March 2006. Public environmental review documentation (**PER**) had been released as part of the relevant assessment process. Juukan 1 and Juukan 2 were expressly identified in the PER, which also noted that some Aboriginal sites would need to be disturbed, in which case, Rio Tinto would obtain clearance under the AH Act.
- 155 In February 2014, Rio Tinto referred a revised proposal for the Brockman 4 Mine (**2014 Revised Proposal**) to the EPA for assessment, which sought approval for (amongst other things) an additional 950 ha of clearing.
- 156 The 2014 Revised Proposal led to the issue of MS 1000 on 11 March 2015. The implementation conditions in MS 1000 superseded the conditions stated in MS 717.
- 157 Juukan 1 and Juukan 2 were referred to in the environmental assessment application documentation that resulted in MS 717 (and were identified as within the project area). The land on which those sites were located fell outside the clearing footprint in the MS 717 approval granted, as shown in Figure 2 attached to MS 717.
- 158 The land did, however, fall within the additional 950 ha of clearing for which approval was sought in the 2014 Revised Proposal and which led to the approval resulting in MS 1000.
- 159 The Environmental Review Document for the Revised Proposal states: (i) no ethnographic sites have been identified to date within the Revised Proposal boundary; and (ii) some archaeological sites identified to date may be impacted by the [Revised] Proposal; however, these sites are of low to moderate significance.
- 160 In April 2018, the Brockman 4 Mine Closure Plan was submitted to the EPA (as required). It was placed on the EPA website and relevantly noted that:
A 40,000 year old rock shelter, named Juukan 2, was discovered in 2003 during survey work of the area, which was located adjacent to an important ancient travel route for PKKP ancestors (Purlykuti Creek). Brockman 4 mining operations were

unable to avoid impacting this site, therefore full salvage excavation of the site was undertaken in 2014, in accordance with Western Australian law.

3.9 2014 – 2019: Consultation and engagement mechanisms relevant to Juukan 1 and Juukan 2

(i) LIC meetings

- 161 The 14 July 2014 meeting at which the significance of Juukan 2 was shared with the PKKP was the final LIC meeting for nearly two years, given general funding and logistical difficulties experienced by PKKPAC unrelated to Brockman 4.
- 162 The next LIC meeting was held on 1 July 2016. The significance of the Juukan artefacts retrieved from the 2014 salvage excavation trips was presented at this meeting. There were generally two LIC meetings held each year.
- 163 Despite the lack of a formal forum, Rio Tinto and PKKP consulted and engaged in other ways between 2014 and 2016, including:
- (a) PKKP Land Committee Meetings: 'internal' meetings held separately by each of the Puutu Kunti Kurrama and Pinikurra people. Rio Tinto Heritage team members were sometimes able to arrange an invitation to attend to discuss certain topics or issues; and
 - (b) Informal discussions 'in the field': discussions while the parties are out in the field for survey works or other activities. These are valuable because typically the PKKP people present can 'speak for country'.
- 164 Additionally, specifically in relation to the Juukan rockshelters, Rio Tinto was invited to attend a Puutu Kunti Kurrama meeting in late November 2016 to discuss the analysis of Juukan site materials by researchers from the University of Western Australia (**UWA**). A UWA researcher and Dr Slack were also invited to a Land Committee Meeting in early February 2017 to present on the Juukan artefacts.

(ii) Heritage management transferred to PKKPAC

- 165 From around 2013, on a sporadic basis, PKKPAC indicated an intention to take over heritage responsibilities from YMAC.
- 166 In January 2019, Dr Builth commenced as Culture and Heritage Manager at PKKPAC. In May 2019, PKKPAC notified Rio Tinto that it had a dedicated 'Culture and Heritage Unit which will eventually manage all heritage and land access matters'.
- 167 Heritage accountability was transferred from YMAC to PKKPAC by 1 July 2019.

(iii) 2017-2019 Cultural Heritage Management Plan

- 168 In accordance with a Specific Commitment in the RFD, Rio Tinto prepared a Cultural Heritage Management Plan (**CHMP**) in consultation with the PKKP.
- 169 On 16 November 2017, version 1 of the CHMP was emailed to PKKPAC and was discussed at the LIC meeting on 23 November 2017. In January 2018, YMAC advised that they were happy with the CHMP and did not have any suggested revisions.
- 170 A further version of the CHMP was prepared and circulated in March 2019 to the CEO PKKPAC and Dr Builth (as Culture and Heritage Manager, PKKPAC) seeking comments on changes that had been made to the document.

171 Each version of the CHMP contained the following text under the heading 'Key Heritage Sites' (which included Juukan 1 and Juukan 2):

Excavations conducted as part of Section 16 and 18 processes have demonstrated occupation of the Brockman 4 area through time (e.g. Slack 2008). A radiocarbon date at Juukan rockshelter (located in the Brockman Syncline 4 CHMP: Part B area but now impacted by the development of Pit 1) has revealed that Aboriginal people have lived in the area for at least 43,000 years.

172 The Section 18 Consent for Juukan 1 and Juukan 2 was noted in the CHMP.

3.10 Continued research on Juukan 1 and Juukan 2 artefacts

(i) Artefacts collected

173 The archaeological significance of the artefacts salvaged in 2014 justified innovative, extensive and thorough processes and techniques to ensure sufficient information was obtained to mitigate, as far as possible, impacts to the rockshelters themselves.

174 During the excavations conducted by Scarp Archaeology in 2008 and 2014, a range of artefacts and remains were excavated including a '*latex peel of the north wall of square H*' from Juukan 2 (**Latex Peel**). After the 2014 excavations, the Juukan artefacts were provided to Scarp Archaeology for analysis.

175 The PKKP requested that the artefacts be stored on country. Rio Tinto sought the advice of experts from the Western Australian Museum and various universities on how to appropriately store the artefacts. Following the conclusion of work Scarp Archaeology, the artefacts were returned to Rio Tinto for storage on behalf of the PKKP. Artefacts from the 2008 and 2014 salvage activities are currently held at Rio Tinto's offices in Dampier and in a storage facility at Brockman 4. Rio Tinto is in discussions with the PKKP regarding permanent storage of the artefacts.

(ii) Presentation of findings to the PKKP and the Archaeological Community

176 Following the extensive salvage excavation in 2014, and discussion at the July 2014 LIC meeting, Rio Tinto took steps to present the findings of that work to the PKKP and the archaeological community.

177 Rio Tinto prepared a poster regarding the surveys and the importance of the sites. A final copy of was produced and presented at an Australian Archaeology Association conference in December 2014. It described the salvage process, techniques used and findings.

178 Dr Slack (and others) also presented the findings of the 2014 salvage excavation trips at two further conferences:

- (a) on 10 August 2018, at the Southern Deserts conference, together with UWA student Wendy Reynen (attended by CEO PKKPAC); and
- (b) on 29 November 2018, at a conference jointly held by the Australian Archaeological Association and the New Zealand Archaeological Association.

179 A Latex Peel was prepared during Dr Slack's third salvage excavation trip in August 2014. This was done to commemorate artefacts as they appeared *in situ*. It is on display in a custom cabinet in the Brockman 4 administration building.

- 180 In 2015, YMAC organised and filmed with PKKP participation, a documentary. This was funded by Rio Tinto. It was undertaken as 'mitigation work' in respect of an ethnographic site at Purlykuti Creek (to the west of Juukan Gorge and within the boundary of Pit 1).
- 181 Rio Tinto suggested ethnographic recording of the sites, in the form of a film to record the visual aspects of the Purlykuti landscape and facilitate PKKP inter-generational knowledge transfer. As part of the recording, the PKKP also requested to visit Juukan Gorge and requested Rio Tinto prepare a short script for an elder to read regarding the archaeological significance of the excavated material removed from the Juukan sites. On several occasions, some PKKP members interviewed lamented that the sites were facing destruction due to expansion of the mine.
- 182 In addition to the 14 July 2014 LIC meeting at which the findings from the three salvage excavation trips led by Dr Slack were presented, there were a number of other presentations and discussions about findings.

3.11 The Scarp 2018 Report

- 183 On 31 December 2018, Dr Slack emailed a copy of the Scarp Archaeology Final Report (**Scarp 2018 Report**) to Rio Tinto. Rio Tinto forwarded a copy to PKKPAC and YMAC on 8 January 2019.

(i) Key findings

- 184 Whilst the Scarp 2018 Report provided significant and important detail on the context, methodology and findings of the salvage excavations at Juukan 1 and Juukan 2, ultimately the conclusions were consistent with those found in the preliminary advices provided in 2014.
- 185 It is clear from the Scarp 2018 Report (and consistent with the 2014 preliminary advices and external presentations between 2014-2018) that Juukan 2 was the most significant site. The Scarp 2018 Report stated:
- (a) Juukan 2 is of *'the highest archaeological significance in Australia'*;
 - (b) *'in many of these respects the site is the only one in the Pilbara to contain such aspects of material culture and provide a likely strong connection through DNA analysis to the contemporary Traditional Owners of such old Pleistocene antiquity'*;
 - (c) *'[i]t is rare, anywhere in Australia, to have a sizeable assemblage that spans this long period of Aboriginal occupation....one of the most significant [sic] assemblages of artefacts ever recovered from the Pilbara [was] from Juukan-2 BROCK-21'*;
 - (d) *'[t]he Juukan-2 rockshelter has the amazing potential to radically change our understanding of the earliest human behaviour in Australia. To date, there is no other site of this age with faunal remains in unequivocal association with stone tools. The significance of this cannot be overstated'; and*
 - (e) *'[t]he site was found to contain... a high frequency of flaked stone artefacts, rare abundance of faunal remains, unique stone tools, preserved human hair, and with sediment containing a pollen record charting thousands of years of environmental changes'.*

- 186 The Scarp 2018 Report identified that at the completion of fieldwork *'no further cultural material was located at the locations where cultural salvage occurred'* and *'no further significant cultural material was likely to occur at the two excavated sites'* and these *'can be considered 'cleared' with no further work required.'*
- 187 Based on the conclusion of this archaeological work and advice from Dr Slack that all significant cultural material has been salvaged, Rio Tinto proceeded on the basis that the site could be cleared for mining.
- 188 On 31 December 2018, Dr Slack emailed a copy of the Scarp 2018 Report to Rio Tinto heritage personnel. They forwarded by email a copy of the report to two YMAC employees on 8 January 2019.

3.12 October / November 2019: Purlykuti Engagement

- 189 Despite the ongoing engagement between the PKKP and Rio Tinto in the context of development of the Brockman 4 mine and delivery of benefits under the Participation Agreement, it does appear that in the months leading up to the impact of the Juukan 1 and Juukan 2 sites, Rio Tinto could have better communicated to the PKKP the precise timing of execution of the mine plan that extended Pit 1 at Brockman 4 to directly impact Juukan 1 and Juukan 2.
- 190 On 28 and 29 October 2019, a LIC meeting was held at Brockman 4. The meeting was attended by representatives of the PKKP, PKKPAC, Rio Tinto and UWA. Among the attendees were Dr Builth and the Manager of Mine Operations Brockman 4.
- 191 As part of the engagement, a site visit took place on 28 October 2019. Specifically, Dr Builth requested to visit the Purlykuti Valley in the vicinity of the Juukan rockshelter where the Latex Peel was extracted, the Heritage sea container containing salvaged artefacts and the Boolgeeda Creek discharge point.
- 192 One of the purposes of the visit was to examine an artefact scatter at Purlykuti to the west of Juukan 1 and Juukan 2. This scatter was the subject of a UWA study and covered by a section 18 consent in contemplation of future mining impacts.
- 193 Whilst in the field, Dr Builth spoke with the Manager of Mine Operations. There are differences in recollection of this conversation between the participants. The Manager of Mine Operations' recollection is that Dr Builth said something along the lines of: *'Is that gorge/cave going to be taken out by the pits? It would be in the top 5 of location in the Pilbara with respect to cultural importance'*. He was not sure to where Dr Builth was pointing. He thought she might have been pointing at the *'Juukan shelter gorge'*, but he was not sure. As he was not sure to which site Dr Builth was referring, he did not give a definitive answer.
- 194 Subsequent internal discussions identified the confusion as to exactly what area was being referred to by Dr Builth. For example as stated in an email the Mine Manager stated *'I'm still not 100% sure if each of us (Heather, myself, yourself) are talking about the same bit of land'*. The team proceeded on the assumption that Dr Builth was discussing rockshelters and it was agreed that the Heritage team would respond on whether the rockshelters would be *'taken out by the pits'*. However, regrettably no response was provided to Dr Builth.
- 195 We also acknowledge that in October 2019 there were discussions at Brockman 4 between Rio Tinto personnel and the PKKP Cultural Heritage Manager, about the status of the mine plan in relation to the Juukan area. Recollections differ as to

those discussions. However, we acknowledge this presented an opportunity for Rio Tinto to confirm the timing of impacts to Juukan 1 and Juukan 2, which had long been within the mine footprint. It appears the precise timing of the direct impacts to the shelters was not clearly communicated to the PKKP until 15 May 2020. By this time, the blast that ultimately impacted Juukan 1 and Juukan 2 was already scheduled and was largely loaded.

196 The most recent application for section 18 consent for drilling in the Purlykuti area was provided to the PKKP (Dr Builth) in November 2019 (this followed a draft of the application having been provided in November 2018). That application included maps showing the conceptual mine layout including the Juukan 1 and Juukan 2 rockshelters.

197 Section 18 consent to allow drilling in the Purlykuti area was obtained in March 2020.

3.13 Social Surroundings Work for Part IV environmental approval

198 Around November 2019, Rio Tinto commenced preparations for the Social Surroundings field component for a Part IV environmental approval required under the EP Act. This environmental approval is required for the expansion of Brockman 4 Mine and Rio Tinto is required to undertake and consider Social Surroundings surveys.

199 This is a relatively new process which requires contemplation and consideration of impacts of additional mining operations on the broader landscape including cultural heritage. The EPA Guidelines indicate that social surroundings work requires consideration of Aboriginal heritage and culture, and is intended to complement the AH Act.

200 The Social Surroundings surveys were undertaken by PKKPAC's selected consultant anthropologist. Between 24 and 28 February 2020, that anthropologist, accompanied by members of the PKKP and Rio Tinto personnel, undertook survey activities.

201 On 23 March 2020, the PKKP consultant anthropologist sent Rio Tinto a draft preliminary advice for the Brockman Syncline Cultural Values consultation (**2020 Draft Advice**). This draft advice referenced, under a section entitled '*Identification and assessment of areas with significant social surrounds values*', Purlykuti Creek and the tributary Gorge featuring Juukan 1 & 2 as localities of high importance.

202 The 2020 Draft Advice made a number of recommendations, including that Rio Tinto facilitate detailed recording and mapping of the three identified areas/locations of high significance.

203 While Rio Tinto subsequently sought clarification of the boundaries for the three areas identified (including Juukan 1 and Juukan 2), the final version of the 2020 Draft Advice (**2020 Preliminary Advice**) that was sent to Rio Tinto on 20 April 2020 stated that:

No detailed boundaries have yet been established for the three locations. PKKP suggest that a detailed recording and mapping will be undertaken during the next field exercise.

204 The 2020 Draft Advice and 2020 Preliminary Advice were each copied to Dr Builth of PKKPAC at the time of being provided to Rio Tinto. The 2020 Preliminary

Advice was escalated within the Communities team in April 2020, with a request for escalation in the business.

205 The LIC meeting scheduled for April 2020 was cancelled due to COVID-19.

3.14 Early May 2020: Drilling of blast holes; PKKP request to visit Juukan

206 Mining in Pit 1 had commenced in 2014. Mining is always an iterative process involving optimisation and re-optimisation of available resources as further information is generated (including ore body knowledge, grade requirements and operating constraints). Rio Tinto's Life of Mine plans are ordinarily updated annually to account for changes in resources and reserves.

207 Development works commences ahead of mining to facilitate to access to the ore body. This typically involves drill and blast and construction of access routes. In Pit 1, from July 2018 to April 2020, there were 19 blasts within a 250m radius of Juukan 1 and Juukan 2, with the most recent on 30 April 2020. Some damage in the area of Juukan 1 and Juukan 2 as a result of these, or earlier, blasts was apparent.

208 Between 3 May and 12 May 2020, in line with Rio Tinto's mining sequence for Brockman 4, a total of 382 blast holes were drilled north of Juukan 1 and Juukan 2.

209 Loading of the blast holes commenced on 13 May 2020, with 226 holes loaded on that day, 62 holes loaded on 16 May 2020, 72 holes loaded on 17 May 2020 and 22 holes loaded on 19 May 2020.

210 The steps involved in loading holes are:

- (a) inserting an electronic detonator and booster in each hole, suspended on a piece of copper wire;
- (b) pumping in a liquid explosive and, in this case, emulsion;
- (c) tipping 'stemming' (coarse rocks) in to act as a plug at the top of the hole.

211 On 6 May 2020, PKKPAC sent Rio Tinto a copy of the 'PKKP 2020 Implementation Plan' with comments added. The preparation of an implementation plan was a requirement under the RFD.

212 An earlier version of the plan had been circulated to PKKPAC by Rio Tinto on 12 March 2020. The version of the plan provided by PKKPAC on 6 May 2020 (and in final on 14 May 2020) included the following:

Celebrate Juukan 47,000 year old rock shelter with traditional owners with a site visit (s18 approved area) we would like to visit while we can. [underlining indicates additional wording added by PKKPAC]

3.15 PKKP informed of blast plans

213 On 14 May 2020, a Rio Tinto Heritage team member met with Dr Builtth. Dr Builtth asked whether a site visit to Juukan Gorge could be arranged as part of NAIDOC week (5 to 12 July 2020). Rio Tinto undertook to make enquiries.

214 Enquiries were then made of Brockman Technical Services personnel as to the status of mining activity around Juukan 1 and Juukan 2. Heritage informed Technical Services that following completion of a baseline survey for Social Surroundings as part of the Brockman Syncline Proposal Part IV earlier that year,

Rio Tinto had received advice from PKKP that reassessed the significance of several sites in the vicinity of Brockman 4 Pit 1 including the Juukan Tributary and associated rockshelters.

- 215 On 15 May 2020, Brockman Technical Services personnel confirmed that an area to the south of Juukan 1 and Juukan 2 had been blasted, a blast to the north was scheduled for 17 May 2020 and that that site had been loaded.
- 216 Rio Tinto Heritage requested a suspension of the blast and requested information on options on whether the blast had to proceed. That afternoon it was confirmed the blast had been rescheduled to 20 May 2020.
- 217 On that same afternoon, Rio Tinto Heritage emailed Dr Builth and CEO PKKPAC advising that 'blasting had occurred in the area this year...and the area immediately to the north was due to be blasted on Sunday with the holes drilled and the shot placed.' The email noted that one of the shelters was potentially structurally compromised due to the blasting earlier in 2020. The email stated '[a]s you are aware, the sites are within the current mine pit design, and RT was granted s18 for that activity in 2013.' The email asked Dr Builth and CEO PKKPAC to review this information as a priority, and contact Rio Tinto Heritage with any queries.

3.16 PKKP formally communicates recently revised significance of Juukan Gorge

- 218 On 18 May 2020, by email from Dr Builth, Rio Tinto was provided with clear visibility that the ethnographic significance of the Juukan Gorge area had increased for the PKKP. Whilst Rio Tinto had long understood that the sites were of high significance to the PKKP, consent from the PKKP to mine the area had been obtained on the express basis that Rio Tinto would mitigate impacts to heritage sites where it was not practicable to avoid them due to location near an ore body and would consult with the PKKP about the appropriate means of doing so. Rio Tinto understood that the extensive salvage and preservation work undertaken in 2014 had satisfied this agreement.
- 219 That morning, Dr Builth emailed Rio Tinto Heritage stating:
- As a matter of urgency please see attached by short report supporting the suspension of all works in the vicinity of Juukan Gorge.*
- We give notice that the Corporation regards the Juukan Gorge and all its features in the highest possible regard due to its extreme cultural and scientific significance to us.*
- We have only been made aware on Friday that the high level of significance of this place has not been communicated to a sufficient level or formalised by the former PKKP AC representative heritage body with action to ensure its protection. We are bringing this to your notice due to the imminent danger of its destruction at this time.*
- Given the time constraints we are giving advance notice that a letter formalising the Corporation's position on this matter will follow.*
- Please accept the attached short report outlining the situation, including sensitive ethnographic information that has recently been provided to myself, as Culture and Heritage Manager for PKKPAC.*
- 220 The report attached to the email was described as being from the Builth 2013 Report 'with additions'. This report included a section on the 'recent sensitive

ethnographic significance' of the area. This additional information is not repeated here due to its culturally sensitive nature.

- 221 Dr Builth forwarded her email and report to General Manager Communities and Communications that afternoon.

3.17 Rio Tinto considers new information

- 222 Following receipt of Dr Builth's email, Rio Tinto Heritage recommended to applicable operational and technical leadership that all planned blasting within a 350m radius of Juukan 1 and Juukan 2 be temporarily suspended to allow for further consultation with the PKKP.
- 223 Technical Services leadership advised that it was not clear whether, from a technical perspective, the blast pattern could be unloaded, and also noted that the implementation of a buffer zone as recommended would require a major pit redesign.
- 224 A meeting was later convened with representatives from Mine Planning, Operations and Heritage teams to discuss the timing of the blast. The deferral of the blast to 20 May 2020 was confirmed.
- 225 That evening, relevant operational and technical leaders, including one of the relevant Senior Leadership Team members, considered the feasibility of safely unloading the blast and associated production impacts.

3.18 Tuesday 19 May 2020: Blast timing reconsidered with PKKP; heritage sites not covered by Section 18 Consent identified in blast area

- 226 On 19 May 2020, CEO PKKPAC emailed Rio Tinto Heritage requesting an immediate suspension of all blasting operations in the vicinity of Juukan Gorge for at least 48 hours to allow PKKPAC to review its options. Rio Tinto responded that the site had been drilled and loaded and for practical and safety reasons the shot could not be removed, and that it was due to be fired on 20 May 2020.
- 227 In the evening, CEO PKKPAC reiterated the request for a postponement to enable PKKP to obtain urgent independent advice from a mining safety expert.
- 228 On 19 May 2020, it was identified that while the Section 18 Consent did cover Juukan 1 and Juukan 2, it did not cover the three "heritage points" identified in the Builth 2013 Report within the Juukan Gorge which had recently been identified by the PKKP as significant.

3.19 Wednesday 20 May 2020: PKKP blast consultant provides views on options

- 229 On that morning, a Communities manager sent an email to CEO PKKPAC to advise that the blast had been rescheduled to 22 May 2020.
- 230 Later that day, PKKP's independent blast consultant emailed a number of technical questions to Rio Tinto. These related to the blast pattern, proximity to the shelters and the feasibility of not proceeding. Technical and operational input was sought internally in respect of the questions posed.

3.20 Thursday 21 May 2020: independent advice on mitigation options is obtained

(i) Escalation to Chief Executive Iron Ore and the broader Rio Tinto Iron Ore Senior Leadership Team

- 231 On 21 May 2020, a number of SLT members including the Chief Executive of Iron Ore were briefed on this matter. It was noted that the proposed blasting site was

proximate to Juukan 1 and Juukan 2 (in respect of which Section 18 Consent had been obtained), as well as additional places which had previously been identified by the PKKP but over which a section 18 consent had not been obtained.

232 It was also noted that:

- (a) the scheduled blast could not be avoided because leaving the explosives in the ground would give rise to safety and environmental risks;
- (b) due to the safety risk once the holes had been charged, the charge had to be discharged within 14 days;
- (c) geotechnical confirmation had not been undertaken (and therefore the position was not certain) however, the blast could have a direct impact on the additional places identified by PKKP; and
- (d) those additional places were not subject to the Section 18 Consent;

233 The issue was considered further in a teleconference with SLT members and relevant operational and technical leaders later that afternoon. It was noted that there was a 14 day safety guarantee by the explosives manufacturer, but the longer the delay the greater the safety and environmental risks may become. Indeed, the usual practice is to drill and immediately blast a loaded pattern. There was discussion regarding the fact that Juukan 1 and Juukan 2 were directly below the holes and would be expected to be damaged with no preventative action possible.

234 At the conclusion of this discussion, the Chief Executive Iron Ore advised the blast could proceed provided that Rio Tinto did not impact the additional places. To this end, the blast was further delayed to Saturday 23 May 2020 to allow further due diligence on risk mitigation to be carried out.

(ii) Independent technical advice on options with blast site obtained

235 On the morning of 21 May 2020, an independent consultant was engaged by Rio Tinto to conduct an independent review of the blast and advise on mitigation options available in respect of the additional places.

236 Later that day, the consultant identified two potential mitigation options:

- *Use the current as loaded blast parameters and design a specific initiation sequence to address the potential hazards and fire the blast*; or
- *'Use a vacuum truck, water truck and remove all explosives from the blast and do not fire the blast. Determine a solution at a later date'.*

237 The consultant concluded 'Solution 1' was the lowest risk option and *that 'Solution 2 presents a higher risk to rectify the current heritage site, was unlikely to be 100% effective and may have loaded bits of holes containing remnant bulk explosives'.*

238 Rio Tinto understood that under Solution 2, any hole not successfully unloaded must be blasted given the inherent risks of leaving live explosives in the ground and potential environmental consequences of leaching. Given the size of the blast pattern, this would mean that large areas would need to be isolated.

239 On the evening of 21 May 2020, Rio Tinto contacted the blast consultant and asked that he provide further advice in relation to the four questions raised by PKKP's blast expert about the feasibility of not proceeding with the blast. PKKP's blast consultant had expressed a view that it was 'probably impractical to try and uncharge hundreds of blastholes and probably would be deemed an unsafe

practice'. Rio Tinto's independent blast consultant confirmed this position stating that 'we concur that uncharging all the holes is very unlikely to be successful, and we would not recommend this as a preferred remediation method'.

3.21 Friday 22 May 2020: SLT consider options and confirms mitigation course

- 240 The conclusions reached by Rio Tinto, and its independent blast consultant, were relayed to the PKKP blast expert on 22 May 2020
- 241 That afternoon, a number of SLT members including the Chief Executive of Iron Ore participated in a teleconference with representatives from Heritage, Technical and Operational teams.
- 242 In light of advice received, Rio Tinto did not consider it feasible to remove the shot from the holes to protect Juukan 1 and Juukan 2. There was insufficient time to do so safely given the limitations on the stability of the explosives and the unacceptable environmental and safety risks.
- 243 It was decided that the blast could proceed given it was not feasible to unload the entire shot, but that steps to protect the additional places of significance should be explored.

3.22 Saturday 23 May 2020

- 244 On 23 May 2020, steps were taken to remove the stemming from eight of the holes within close proximity to the additional places. This process took about 10 hours. Ultimately one of these holes needed to be detonated as the booster and detonator could not be removed. This work confirmed that the blasting advice received by PKKP and Rio Tinto that unloading the entire shot was not feasible.
- 245 That morning, a meeting was also held in Karratha with representatives of PKKPAC (CEO PKKPAC and Dr Builth), the PKKP, and senior Rio Tinto Heritage representatives.

3.23 Sunday 24 May 2020

- 246 The shot was fired on 24 May 2020. The additional cultural heritage sites were not impacted. This was confirmed to the PKKP by Rio Tinto at a meeting convened on 28 May 2020 and through photos and drone footage on 2 June 2020.
- 247 A subsequent site visit on 12 June 2020 suggested that Juukan 1 and Juukan 2 were impacted but not entirely destroyed. However the exact extent of the impact on the rockshelters was not able to be ascertained at that time.

3.24 Post blast engagement

- 248 Following the blast on 24 May 2020, Rio Tinto has engaged with the PKKP in a number of ways.
- 249 We promptly engaged with the PKKP at the most senior levels of Rio Tinto.
 - (a) We have been in regular discussions with the PKKP at the most senior levels of the organisation since this time and are talking with them about what happens next in relation to the Juukan Gorge.
 - (b) On 4 June 2020, the CEO of Iron Ore sent a letter to the PKKP Board and Land Committee. The letter contained an apology to all PKKP people. In the letter, Rio Tinto committed to:

- (i) work with the PKKP in respect of the additional sites in the Juukan Gorge area;
- (ii) undertake a review of Rio Tinto's heritage management processes to identify, understand and recommend improvements; and
- (iii) advocate for appropriate legislative reform and work with the PKKP and the other Pilbara Traditional Owners with whom Rio Tinto engages on this issue.

- 250 On 11-12 June 2020, a number of Rio Tinto representatives, including the CEO of Iron Ore, attended a site visit with representatives of the PKKP. The purpose of the site visit was to give the PKKP an opportunity to view Juukan 1 and Juukan 2 after the blast and to discuss how to manage the other sites in the Juukan Gorge area.
- 251 On 1 July 2020, Rio Tinto's senior leaders including the Rio Tinto Chief Executive attended PKKP's board meeting to express our unreserved apology and intention to rebuild our relationship.
- 252 We have been discussing the potential for additional resources to be provided to the PKKP to assist with management of their cultural heritage.
- 253 We suspended all activities with potential to impact a heritage site, irrespective of whether we had approval under the Aboriginal Heritage Act to disturb the site, while we determined next steps.
- 254 We have inserted additional layers of governance in relation to decision-making for disturbance of cultural heritage sites. A confirmatory decision at the appropriate level, based on the cultural heritage classification of the site, is required before any disturbance is permitted. For some sites, the escalation process may require approval from the Heritage Sub-Committee of the Rio Tinto Executive Committee, which comprises the Chief Executive, Chief Financial Officer, Group Executive Corporate Relations and Group Executive General Counsel.
- 255 Rio Tinto is in discussions with the PKKP to establish a joint process, including agreeing the terms of a moratorium on mining activity over an area to be agreed around the Juukan Gorge. Terms and conditions of the proposed moratorium are being finalised.

4 SECTION 4 – PUBLIC POLICY

- 256 We share the Australian Government's vision for Australia to have the world's most advanced, innovative and successful resources sector, as outlined in the National Resources Statement.
- 257 Rio Tinto makes regular contributions to public policy development in Australia and frequently comments on the design and effectiveness of legislation. We have made recent policy submissions that have relevance to the Inquiry's terms of reference, including our submissions as part of consultation processes related to review of the AH Act in Western Australia as well as in relation to the statutory review of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) that is currently underway.
- 258 In the following section we outline our views on specific issues raised in the Inquiry's terms of reference. We welcome the opportunity to further discuss ways to improve the policy and legislative framework as part of this process.
- (f) ***the interaction of state Indigenous heritage regulations with Commonwealth laws***
- 259 State Indigenous heritage protection laws are the primary means by which culturally and historically significant sites are protected in Australia. Heritage protection is also regulated at a Commonwealth level under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) (**ATSIHP Act**) and the provisions of the EPBC Act concerning Aboriginal cultural heritage.
- 260 The ATSIHP Act can be activated for the preservation and protection of areas and objects of particular significance to Indigenous Australians. The Commonwealth Minister can make declarations to protect these areas and objects from specific threats of injury or desecration.¹⁹ Commonwealth ATSIHP Act declarations are made only as a last resort in cases when state or territory laws do not provide effective protection.²⁰
- 261 Rio Tinto's view is that where State heritage preservation laws are effective, there should not be a significant need for Commonwealth protective action. We believe the current balance and interplay between Commonwealth and State legislation is appropriate, with the State legislation being the primary legislation and the ATSIHP Act only applying as a "safety net" in exceptional circumstances where for some reason it is considered the State legislation does not provide adequate protection. This minimises duplication between State and Commonwealth legislation and provides effective protection of cultural heritage.
- 262 Rio Tinto also acknowledges that Traditional Owners, as traditional custodians of the land, are concerned about impacts on and activities on their country generally. As such, we recognise that Traditional Owner concerns are not limited to sites of cultural significance. In our view, the structure and approach of the existing environmental impact assessment process under the EP Act necessarily involves Traditional Owners in assessing impacts on cultural heritage values. The broad definitions of 'environment' and 'environmental values' in the EP Act include the concepts of 'social surroundings' and 'beneficial use' which are accepted to incorporate values of significance to Traditional Owners. We maintain regular

¹⁹ Sections 9 and 10 of the ATSIHP Act.

²⁰ Sections 13(2) and 13(5) of the ATSIHP Act.

engagement and dialogue with Traditional Owners throughout the project life cycle and engage with Traditional Owners to monitor and conduct other land management activities where appropriate.

(g) the effectiveness and adequacy of state and federal laws in relation to Aboriginal and Torres Strait Islander cultural heritage in each of the Australian jurisdictions

- 263 As we have stated previously, we believe the most appropriate mechanism to manage impacts to heritage is through State law. Rio Tinto has and will continue to support the WA Government's reforms to repeal the AH Act and replace it with new Aboriginal heritage legislation.
- 264 Rio Tinto has participated in the ongoing review of the AH Act in WA. Rio Tinto confirms its already publicly stated position, which draws on its long term and extensive engagement with Traditional Owners on heritage matters in Western Australia, that it supports new Aboriginal heritage legislation that balances meaningful Aboriginal stakeholder engagement and protection and management of Aboriginal heritage values with the delivery of certain, timely and efficient outcomes for stakeholders.
- 265 The following points are drawn from those submissions:
- (a) **Traditional Owners must have a primary role** in the management of heritage values, including through the introduction of Local Aboriginal Heritage Services (**LAHS**), noting this change will need to be supported by ensuring LAHS are appropriately resourced to effectively and efficiently perform this function.
 - (b) **Heritage protection should first seek to be achieved through agreement making** with the Traditional Owners of the affected land, rather than through the current statutory framework which does not contemplate agreements. In this regard, Rio Tinto has comprehensive agreements regarding land management, including cultural heritage. Rio Tinto supports further consultation to develop minimum requirements or model guidelines in the interests of ensuring agreements wherever possible embody best practice. However, this should occur in a manner that does not introduce uncertainties for operations under existing agreements.
 - (c) **Tiered assessment process:** the introduction of the Aboriginal Heritage Council to assist with the tiered assessment process and an expedited approval process for proposals that have no or low impacts on heritage values, will ensure greater focus on sites of higher significance. However, the Minister must retain overall accountability and decision making-powers for the Aboriginal heritage system in Western Australia, including and especially for projects of State significance and areas of high heritage significance.
 - (d) **Intangible heritage or cultural landscape.** We support amendments to the definitions and scope of the amended legislation to manage intangible heritage or cultural landscapes and for managing changes within cultural landscapes. It is acknowledged that intangible values can cover larger areas of land, including whole mines or developments. Accordingly, the legislation will also require a clear framework to

determine how these sites can be identified and impacts can be measured as this has the potential for large areas to be quarantined from development, notwithstanding investment in exploration and mining investment over many years.

266 Further to what had been stated in those submissions:

- (a) **Appeal rights.** Rio Tinto also supports transparency in decision making and appeal rights for Traditional Owners and land use proponents for future statutory approvals that authorise disturbance of heritage sites. (In the current framework that means approval under section 18.) In this regard, efficient and effective consultation prior to and during approval processes should facilitate acceptable and timely outcomes.

267 Our submissions outlining our support for the above principles also highlight that is important that any changes to the current regime should:

- (a) not introduce uncertainty or risks to proponents who have acted in good faith to appropriately manage heritage values within the context of their existing operations and in compliance with current laws; and
- (b) be proportionate in balancing the protection of cultural heritage and the potential for land development, as actions prohibiting land development may affect not only the land use proponents but also Traditional Owners who can, and often choose to, benefit through agreements in regards to land use.

(h) ***how Aboriginal and Torres Strait Islander cultural heritage laws might be improved to guarantee the protection of culturally and historically significant sites***

268 In addition to the areas of improvement outlined above, we remain of the view that the starting point must be that culturally and historically significant sites should be protected and disturbance of a site should be avoided where practicable.

269 Where avoidance of a site is not practicable, a thorough assessment of the site's significance should be conducted before approval to disturb the site is granted. Achievement of this objective could be supported by the proposed 'tiered' approval process that provides Traditional Owners, the land user, and the decision making Minister having the best information available at the time of making a decision about whether a site should be preserved or can be disturbed.

270 Archaeological investigative methods have evolved and less invasive techniques, such as ground penetrating radar, may in an archaeological context provide sufficient information to assess a site's archaeological significance. However, more invasive techniques may still be required to fully capture the historic and cultural value of a site beyond its age. Currently there are limitations in the existing legislative and policy framework which constrain the extent of invasive investigations that might be performed by proponents in the absence of a consent to disturb a site in contemplation of land use.

271 Introducing a 'tiered' approval process with increased flexibility for proponents to undertake a more thorough range of investigative works prior to seeking consent to impact sites that appear significant. This would ensure the significance of the site is properly understood and ultimately support more robust and transparent decision-making processes under heritage legislation.

- 272 Minimum information requirements and objective value criteria for assessing 'significance' should be prescribed so that investigative techniques are directed at accurately capturing the relevant value of a site through its assessment, while limiting the disturbance that occurs during this phase of work. This criteria should be flexible enough to ensure it reflects what is significant to the Traditional Owners in accordance with their traditions.
- 273 Under a 'tiered' approvals structure, results of the expanded upfront investigation works would be shared with Traditional Owners, including in relation to any mitigation measures. This work would inform any further application for disturbance for land use impacts. Notwithstanding the consultation, the Traditional Owners would have a right to object to the application for land use disturbance if an application is made to the Minister.
- 274 Decisions about protection of heritage sites must always be made or endorsed by the State in a transparent manner, acting on behalf of the community taking into account changing societal expectations and economic value but having particular regard to the views of the Traditional Owners, including whether there is any agreement between the land use and the Traditional Owners.
- 275 Once decisions are made as to whether a site should be preserved or may be disturbed, subject to the conclusion of any appeal process, all stakeholders must be able to rely on that decision.
- (i) ***opportunities to improve Indigenous heritage protection through the Environment Protection and Biodiversity Conservation Act 1999***
- 276 Whilst acknowledging the role of the EPBC Act in protecting matters of world and national heritage, Rio Tinto's position is that heritage protection should primarily occur under state legislation. For example, in Western Australia it is the AH Act, supplemented by existing EP Act mechanisms to take into account social surroundings or intangible values.
- 277 We note the Independent Review of the EPBC Act - Interim Report by Graeme Samuel (***Interim Report***), which was released on 20 July 2020, and we support reform to achieve better outcomes through more effective and efficient processes. We look forward to continuing to participate in the review process. We also welcome the announcement by the Commonwealth Government for a "national engagement process for modernising the protection of Indigenous cultural heritage", including round table meetings of between Commonwealth and state Indigenous and environment ministers.²¹

²¹ The Hon Sussan Ley MP, [media release: reform for Australia's environmental laws](#), 20 July 2020

5 SECTION 5 - EARLY FINDINGS AND STEPS TAKEN TO DATE

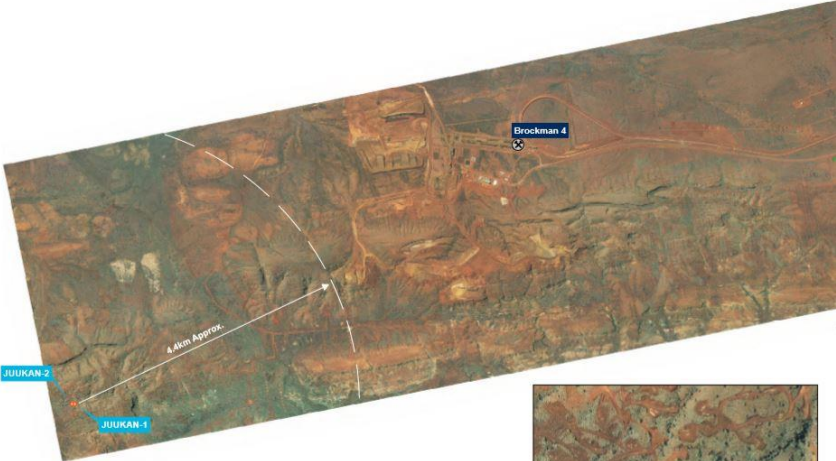

- 278 The events around the destruction of the Juukan rockshelters should not have occurred and we are committed to learning and change.
- 279 Our Board-led review will report on the events at Juukan Gorge. It will appraise Rio Tinto's internal heritage standards, procedures, reporting and governance, and will examine the company's relationship and communications with the PKKP, with a focus on identifying improvements to the effectiveness of Rio Tinto's internal processes and governance. Conclusions arising from the review will be applied across the Group, as appropriate. The report will be made public.
- 280 In considering possible changes that should be made to legislative frameworks, contractual agreements and new standards and ways of working, there is a critical and ongoing balance to be struck. On the one hand, it is essential to find more effective and flexible means to escalate and manage concerns regarding the preservation of the unique cultural heritage of Indigenous Australians. On the other, there needs to be a clear and predictable framework to enable long-term investment in, and the efficient operation of, mining projects that contribute so significantly to Australia. In meeting that challenge, governments, as well as the mining industry, Traditional Owners and the wider community all have a vital contribution to make.
- 281 Cultural heritage management areas which will require further consideration and consultation could include:
- (a) ways in which the Rio Tinto/PKKP Participation Agreement can accommodate cultural heritage management in circumstances like the Juukan rockshelters where new material information becomes available;
 - (b) appropriate authority levels for Rio Tinto decision-making on cultural heritage issues;
 - (c) processes for escalation and review of issues;
 - (d) the effectiveness of communications and of internal cultural heritage management standards and procedures, as well as the risk assessment framework for cultural heritage issues; and
 - (e) the strengthening of the interconnectedness among heritage, mine planning and mine operations areas within Rio Tinto's organisation.
- 282 Further areas of consultation and review will be pursued in the light of outcomes of this Inquiry, the current review of Western Australia's legislative framework for heritage issues, the Rio Tinto Board-led review as well as ongoing engagement by Rio Tinto Senior leaders with Traditional Owners across Australia.
- 283 Pending the conclusion of the Board-led review and those further consultations, we have taken the following interim actions:
- (a) **Strengthening our partnership** and ensuring the right engagement at the right level is occurring. Already this has included engagement at the most senior levels of Rio Tinto with the PKKP board and other interactions. We are seeking ways that we can learn from these events and move forward with a stronger partnership;
 - (b) The **next 5-year review of the Participation Agreement** between Rio Tinto and the PKKP is scheduled for 2021 and we will be discussing

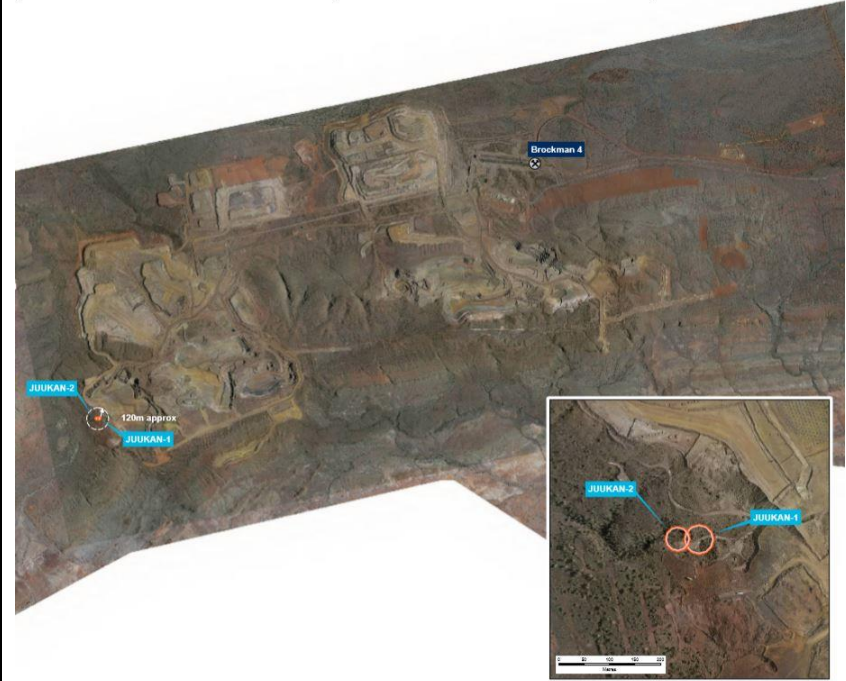

ways we can strengthen the partnership and ensure better ways to communicate, including at the right level. This timing also enables both parties to incorporate the findings and learnings gathered from the various reviews underway. In particular, Rio Tinto will seek to reflect in our existing agreements any changes to heritage legislation and any other learnings that are subsequently identified. We will work with Traditional Owners on the process and timing of any proposed amendments; and

- (c) We are **improving the way we conduct our heritage risk assessments**. The revised processes are designed to reinforce internal transparency on status, timing and impact of disturbance activities on site, as well as the management and escalation of risks relating to heritage management and relationships with Traditional Owners.

APPENDIX 1: PHOTOS OF MINE FOOTPRINT FROM 2010 TO 2020

From commencement of operations at Brockman 4 in 2010, the mine has steadily expanded in size. The following photos illustrate the expansion of Brockman 4 from 2010 through to March 2020, with an insert showing a zoomed in view of Juukan Gorge.

	<p>September 2010</p> <ul style="list-style-type: none"> This image was captured shortly after first ore production at Brockman 4 Heritage sites in the Juukan Gorge are shown in left corner Operations hub and rail loop shown in upper right corner At this time, the sites are 4.4km from the Brockman 4 development area
	<p>December 2015</p> <ul style="list-style-type: none"> This image was captured during the sixth year of mining at Brockman 4 This follows a doubling of the production rate to 44 million tonnes per annum from 2013 By this time, the Brockman 4 development area can be seen to have progressed within 300m of Juukan Gorge The early development of Pit 1 can be seen next to Juukan Gorge

	<p>November 2019</p> <ul style="list-style-type: none">• This image was captured during the tenth year of mining at Brockman 4, shortly after a site visit by PKKPP representatives as part of the Local Implementation Committee meeting in late October 2019• The Brockman 4 development area is now 120m from the Juukan-1 and Juukan-2 sites• By this time, blasting within 250m of Juukan-1 and Juukan-2 was occurring regularly, having commenced in 2018
	<p>June 2020</p> <ul style="list-style-type: none">• This image was captured in the week following the blast.• The blue dotted line indicates the area blasted on 24 May 2020 as part of Pit 1 operations at Brockman 4

Glossary of Terms

Term	Definition
2014 Revised Proposal	A revised proposal for the Brockman 4 Mine referred by Rio Tinto to the EPA in February 2014
2020 Draft Advice	'Preliminary Advice – Brockman Syncline Cultural Values Consultation PKKP' dated 20 March 2020 prepared by PKKPAC's consultant anthropologist. Draft advice following Social Surroundings surveys conducted between 24 and 28 February 2020
2020 Preliminary Advice	'Preliminary Advice – Brockman Syncline Cultural Values Consultation PKKP' dated April 2020 prepared by PKKPAC's consultant anthropologist. Final version of the 2020 Draft Advice
ACMC	Aboriginal Cultural Materials Committee, which determines whether sites are 'Aboriginal sites' for the purpose of the AH Act
AH Act	<i>Aboriginal Heritage Act 1972 (WA)</i>
ATSIHP Act	<i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)</i>
BIA	Binding Initial Agreement between the PKKP, Hamersley Iron Pty Ltd and Robe River Mining Company Pty Ltd dated 28 June 2006
Brockman 4	A Rio Tinto mine in the Pilbara in Western Australia.
Builth 2013 Report	'Ethnographic Site Identification Survey Report for Brockman 4 Pit 1 area – Final version' dated 30 July 2013, prepared by Dr Heather Builth. Report following Dr Builth's ethnographic survey on 13 June 2013
CHMP	Cultural Heritage Management Plan, a Specific Commitment under the RFD
CHMRS	Cultural Heritage Management Regional Standard, a Specific Commitment under the RFD
CNC	Central Negotiating Committee established in 2003 at the proposal of ten Traditional Owner groups
Cultural Heritage Protocol	A protocol within the Participation Agreement that sets out matters such as the appointment of a Heritage Body by the PKKP as a point of engagement, creation of (optional) Heritage Sub-Committee and the procedure for the initiation and conduct of archaeological and ethnographic heritage surveys
DAA	Department of Aboriginal Affairs, Western Australia
EP Act	<i>Environmental Protection Act 1986 (WA)</i>
EPA	Environmental Protection Authority, the regulatory body that enforces the EP Act
EPA Guidelines	EPA's 'Environmental Factor Guideline - Social Surroundings' published on 13 December 2016
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i>
Hamersley Range State Agreement	<i>Iron Ore (Hamersley Range) Agreement Act 1963 (WA)</i>
Heritage Sub-Committee	Under the Participation Agreement, the Heritage Sub-Committee is an optional sub-committee of the LIC to perform certain functions under the Cultural Heritage Protocol attached to the Participation Agreement
Interim Report	'Independent Review of the EPBC Act: Interim Report' dated 20 July 2020 prepared by Professor Graeme Samuel AC.
Juukan 1	An Aboriginal Site on the PKKP's native title claim land. Sometimes referred to as 'Brock 20'
Juukan 2	An Aboriginal Site on the PKKP's native title claim land. Sometimes referred to as 'Brock 21'
LAC	Local Aboriginal Corporation
LAHS	Local Aboriginal Heritage Services
Land	Land described under the Section 18 Notice as 'a total area of approximately 0.0109 km ² ...situated within... lease AML70/00004'
Latex Peel	A latex peel of the north wall of square H from Juukan 2, excavated by Scarp Archaeology in 2014
LIC	Local Implementation Committee

Term	Definition
ML4SA	Mining lease relevant to Brockman 4 mine held by Rio Tinto since the 1960s
MS 717	Ministerial Statement 717, published 24 March 2006
MS 1000	Ministerial Statement 1000, published 11 March 2015
NT Act	<i>Native Title Act 1993</i> (Cth)
Participation Agreement	PKKP Claim Wide Participation Agreement between Hamersley Iron Pty Ltd, Robe River Mining Company Pty Ltd on its own behalf and for and on behalf of the Robe River joint venturers and certain individuals acting for and on behalf of the PKKP dated 18 March 2011
PER	Public Environmental Review documentation
PKKP	Puutu Kunti Kurrama and Pinikura people
PKKPAC	PKKP Aboriginal Corporation
PKKP ILUA	PKKP Indigenous Land Use Agreement (Area Agreement) between Hamersley Iron Pty Ltd, Robe River Mining Co Pty Ltd, individuals on their own behalf on and on behalf of the PKKP and PKKPAC dated 15 November 2012
PNTS	Pilbara Native Title Service
Preliminary Advice Report	'Preliminary Advice Report for the PKKP Survey: Brockman 4 Pit 1 Ethnographic Site Identification Survey 2013' dated 24 June 2013, prepared by Dr Heather Builth. Preliminary advice following Dr Builth's ethnographic survey on 13 June 2013
Purlykuti Creek	A site adjacent to Juukan Gorge. Sometimes referred to as 'Purlikuti Creek'
Purpose	Listed purpose under the Section 18 Notice was <i>'the development of Pit One at Brockman 4'</i> including <i>'all associated and incidental work and activities'</i>
RFD	Regional Framework Deed between Hamersley Iron Pty Ltd, PKKP, the Kuruma Marthudunera People, the Ngarlawangga People, the Niyiparli People and the Ngarluma Aboriginal Corporation as agent for and on behalf of the Ngarluma People dated 18 March 2011
RRAs	Rights Reserved Areas
RTIO	Rio Tinto Iron Ore
section 16	Section 16 of the AH Act
section 18	Section 18 of the AH Act
Section 18 Consent	A section 18 consent granted by the Minister for Aboriginal Affairs under the AH Act on 31 December 2013 to use the Land, for the Purpose on sites including Juukan 1 and Juukan 2
Section 18 Notice	A section 18 notice submitted by Rio Tinto to the Department of Aboriginal Affairs under the AH Act on 17 October 2013 for the Purpose on sites including Juukan 1 and Juukan 2
Scarp 2008 Report	'Brockman 4 site re-recording and s16 excavation program – Final Report' dated October 2008, prepared by Dr Michael Slack. Report following Dr Slack's two field trips conducted in 2008
Scarp 2018 Report	'Brockman 4 Pit 1 Salvage – Final Report' dated December 2018, prepared by Dr Michael Slack. Final report on Dr Slack's three excavation field trips conducted in 2014 at Juukan 1 and Juukan 2, and subsequent analysis of those excavations
Social Surroundings	Field component required for a Part IV environmental approval under the EP Act
Submissions	Submissions in support of the Section 18 Notice
UWA	University of Western Australia
Williams December 2008 Report	'A PKKP Ethnographic Site Identification Survey of Brockman 4 Mine Area' dated December 2008, prepared by Roina Williams. Report following Ms Williams' ethnographic surveys conducted over three days in November 2008
YMAC	Yamatji Marlpa Aboriginal Corporation